

NO. 48502-8-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

TAMIKA BOONE, individually, and on behalf of her minor children,
D.B., individually, and D.B. individually,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND
HEALTH SERVICES; AND PATRICIA SMITH d/b/a STARCHILD
DAYCARE,

Respondents.

**BRIEF OF RESPONDENT STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

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I. INTRODUCTION

In January 2006, the Washington Department of Social and Health Services (DSHS or State) summarily suspended the daycare license of Patricia Smith after receiving a referral alleging that a child at the daycare had been abused by Ms. Smith's 12-year-old son. The daycare never reopened. Eight months later in September, Tamika Boone reported to DSHS that Ms. Smith's son and husband, Mr. Ali, had abused her twin sons when they attended the daycare in 2004 and 2005. Although the daycare was long closed, the State investigated the referral and entered founded findings of misconduct against Ms. Smith and Mr. Ali. The Boones then sued the State, alleging negligent investigation and "negligent licensing and monitoring." Both were dismissed on summary judgment.

The Boones' negligent investigation claim fails for multiple reasons. First, neither of the investigations challenged by the Boones-the January 2006 referral or an earlier 1992 referral-created a duty to the Boones. Second, neither investigation was biased or incomplete. Third, the State made no placement decision, much less a harmful one, regarding the twins, as they were never in the State's custody and the State had no role in placing them in Ms. Smith's daycare. Fourth, the manner in which the Boones allege the State's investigation was negligent was not and could not be the proximate cause of a harmful placement decision for the twins.

The Boones' "negligent licensing and monitoring" claim has, on appeal, morphed into several discrete arguments alleging alternative bases for a State-owed duty to the Boones. These also fail for multiple reasons, including sovereign immunity, public duty doctrine, and proximate cause. This Court should affirm dismissal in favor of the State.

II. RESTATEMENT OF ISSUES ON APPEAL

1. Did the trial court correctly dismiss the Boones' negligent investigation claim as a matter of law on the independent bases that (a) the Boones do not challenge the investigation of the only referral concerning them; (b) any duty of the State to investigate prior referrals about other children did not extend to the Boones; and (c) the State did not conduct a biased or incomplete investigation regarding the Boones that resulted in a harmful placement decision?

2. Did the trial court correctly dismiss the Boones' negligent investigation claim against the State because as a matter of law the Boones cannot show that the State's alleged biased or incomplete investigation was the proximate cause of their claimed injuries?

3. Should the Boones' claim based on negligent failure to mandatorily report suspected child abuse or neglect be dismissed as a matter of law because no State mandatory reporter knew that Ms. Smith was permitting Mr. Ali to have unsupervised access to children at the daycare prior to Ms. Boone's September 2006 referral?

4. Should the Boones' negligent daycare licensing claim be dismissed as a matter of law on the independent bases that (a) the State has not waived its sovereign immunity in tort for licensing of daycare agencies because daycare licensing has no private sector analog; and (b) the public duty doctrine bars tort liability for actions relating to regulatory licensing of daycare agencies and no exception to that doctrine applies?

5. Should the Boones' negligent failure to conduct background checks claim be dismissed as a matter of law on the independent bases that (a) the State has not waived its sovereign immunity

in tort for background checking in the context of daycare licensing; (b) the public duty doctrine bars tort liability for actions relating to regulatory licensing of daycare agencies including background checking and no exception to that doctrine applies; and (c) DSHS was not required to conduct a background check on Mr. Ali?

6. Should the Boones' claim regarding assumption of duty be dismissed as a matter of law because they fail to articulate an actionable tort duty?

III. RESTATEMENT OF THE CASE

A. Washington's Statutory Scheme for Child Care Licensing

Before July 1, 2006, DSHS licensed daycares under RCW 74.15 (2004) and Washington Administrative Code (WAC) 388-295.¹ It is unlawful for a daycare to care for children unless licensed by the State. Former RCW 74.15.090 (2004). *Inter alia*, the purpose of the daycare licensing statutes is "[to] license [child care] agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large, and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers, and developmentally disabled persons facilities." Former RCW 74.15.010(5) (2004). Minimum licensing requirements are set by statute. Former RCW 74.15.100 (2004). If the minimum licensing requirements are met, the State must grant or renew a daycare license. *Id.*

¹ Starting July 1, 2006, the newly-created Department of Early Learning (DEL) assumed the task of licensing child care facilities. *See* RCW 43.215.

Licensors inspect daycares during initial licensing and periodically during the licensing period to determine compliance with former RCW 74.15 and 74.13 and other requirements. Former RCW 74.15.030(7) (2004); CP 126 ¶ 4. Otherwise, unless the State receives a referral alleging child abuse or neglect or a report of a licensing violation, it has no obligation to visit a private in-home daycare. CP 126 ¶ 4.

B. The State's Licensure of Ms. Smith's Daycare

Between June 1986 and January 27, 2006, the State licensed Ms. Smith to run an in-home daycare. CP 126 ¶ 5; CP 136-39. Ms. Smith's daycare was a private business not owned by, operated by, or affiliated with the State. CP 126 ¶ 5.

Ms. Smith renewed her daycare license in approximately 1995, 1998, 2001, and 2004. CP 197. Only on her 1995 renewal application did she identify Mr. Ali as her husband and a resident of the home.² CP 207. Ms. Smith's son, Rasul, was born in May 1992. CP 146 ¶ 8. Before January 2006, she did not tell DSHS that Rasul lived in her home. CP 146 ¶ 9.

² The Boones label this as a "background check application." Boone Br. at 3. This document is titled "Family Child Care Home Application for License" and in the "type of application" section, the "renewal" box is checked. CP 207.

C. DSHS Received and Investigated Three Referrals Alleging Abuse at Ms. Smith's Daycare

1. The Boone Twins Attended Ms. Smith's Daycare in 2004/2005, During Which Time DSHS Received No Referrals Alleging Abuse at the Daycare

Ms. Boone³ states that she enrolled the twins in Ms. Smith's daycare in "approximately 2004/2005." CP 74 ¶ 14. The Boones do not allege that DSHS received any referrals about Ms. Smith's daycare during that time. According to Ms. Smith, the twins attended "irregularly and intermittently." CP 93.

2. DSHS Received and Investigated One Abuse Referral Before the Twins Attended Ms. Smith's Daycare

In May 1992 - nine years before the twins were born and twelve years before they attended Ms. Smith's daycare - DSHS received a referral alleging that R.W., age 2 ½, disclosed that two unidentified people "stuck a stick up his butt" the one day he attended Ms. Smith's daycare in February 1992. CP 134, 226. DSHS investigated this referral, as did law enforcement. CP 225-26. Although Ms. Smith told DSHS that Mr. Ali was not at the home the day R.W. attended, DSHS asked the Washington State Patrol (WSP) to run a background check on Mr. Ali and was told he had no record. CP 223. DSHS also interviewed R.W.'s mother, who said that after his disclosure, R.W. was seen by two doctors and underwent a physical

³ For clarity, the State refers to Plaintiffs Tamika Boone and her sons (D.B. and D.B.) as "the Boones" and to Ms. Boone's sons as "the twins." No disrespect is intended.

examination which revealed no evidence of abuse. CP 226. DSHS also interviewed Ms. Smith, who confirmed that R.W. attended her daycare once and that Mr. Ali was not at her home that day. CP 226. DSHS also contacted law enforcement about its investigation. DSHS completed its investigation and determined the allegation unfounded. CP 226.

3. DSHS Received and Investigated Two Abuse Referrals Received after the Twins Left Ms. Smith's Daycare

a. DSHS Investigated the January 2006 Referral Concerning M.T.

M.T. attended Ms. Smith's daycare before October 2005. CP 132. In January 2006, M.T. told his mother (Ms. Royal) that Rasul had sexual contact with M.T. at the daycare. CP 132. On January 24, 2006, Ms. Royal relayed the allegation to Ms. Smith. CP 132. Ms. Smith did not report the allegation to DSHS, but Ms. Royal did. CP 132. Ms. Royal's referral did not allege any abuse by Mr. Ali. CP 132.

Three days after receiving this referral, DSHS summarily suspended Smith's license and closed her daycare.⁴ CP 135-41. A State licensor hand-delivered the summary suspension letter to Ms. Smith, made Ms. Smith call the parents of every child there, and stayed at the daycare until all of the children were picked up. CP 215. After January 27, 2006, Ms. Smith's daycare never reopened and her license was never reinstated

⁴ The effect of the summary suspension was that Ms. Smith could not legally operate her daycare. RCW 34.05.422(4); CP 136-39.

or renewed. CP 127. DSHS also required Ms. Smith to identify all current attendees and sent letters to their parents advising that a child may have been molested at Ms. Smith's daycare. CP 174, 198-99. Ms. Boone claims that she did not receive this letter. CP 174.

Ms. Smith moved to stay the summary suspension. In March 2006, after a full hearing, an Administrative Law Judge (ALJ) denied her request. CP 143-158.⁵ On May 23, 2006, the State revoked Ms. Smith's license. CP 160-65.

b. DSHS Investigated the September 2006 Referral Concerning the Twins

In September 2006, Ms. Boone told DSHS that Rasul and Mr. Ali had abused the twins. CP 131. This referral was made nearly eight months after the State closed Ms. Smith's daycare and nearly four months after it revoked her license. DSHS and law enforcement investigated this referral. CP 131. DSHS entered founded findings against Mr. Ali for abuse and against Ms. Smith for negligent treatment or maltreatment. CP 202-06.

⁵ The Boones erroneously claim that the State closed the daycare in part because Ms. Smith failed to submit Mr. Ali's name for background checks. Boone Br. at 2. The ALJ's bases for upholding the summary suspension of Ms. Smith's license were her failure to report the alleged abuse of M.T. to the State and her failure to identify Rasul as a resident of the home. CP 156-57.

D. Mr. Ali was Not Known by DSHS to Live in the Home or Have Regular, Unsupervised Access to Children

In nearly 20 years of licensure, Ms. Smith only once (in 1995) identified Mr. Ali as her husband and a resident of the home.⁶ CP 207. There is no other evidence that Ms. Smith told DSHS that Mr. Ali was a family member, a resident, or someone who might have regular, unsupervised access to daycare children.

Ms. Smith's Answer to the Amended Complaint states that Mr. Ali "was at no time responsible for or participated in any child care activities associated with" her daycare. CP 94, § III, ¶ 1. Maisha Alexander, Ms. Smith's and Mr. Ali's adult daughter, worked in the daycare. She told DSHS that Mr. Ali did not have unsupervised access to attendees. CP 212.

In January 2006, Ms. Smith told DSHS that Mr. Ali was at the home "off and on but stated he also had another place." CP 212. A licensor noted that "it appears that her husband is back in the home or will be moving in shortly." CP 211. At the March 2006 hearing on Ms. Smith's motion to stay the summary suspension, she and Mr. Ali testified under oath that he did not live at the home. CP 143-158. The ALJ concluded that Mr. Ali did not live in the home and listed several places where Mr. Ali lived over the years. CP 149-52. The ALJ also rejected the argument that Mr. Ali's

⁶ The Boones claim that before 1995, Ms. Smith told DSHS that Mr. Ali owned the home, was her husband, and lived in the home. Boone Br. at 1. The Boones present no evidence to support this claim.

ownership of the home and having the daycare's address on his driver's license was proof of his residence. CP 149-50.

E. The Boones Sued the State and the Trial Court Granted Summary Judgment for the State on All Claims

In 2015, the Boones sued the State, alleging negligent investigation and "negligent licensing and monitoring." CP 60-67. The trial court granted summary judgment to the State on both claims. CP 602-03.

IV. ARGUMENT

A. Standard of Review

On review of an order granting summary judgment, the appellate court engages in the same inquiry as the trial court. *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 595, 601, 70 P.3d 954 (2003). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(e). "An adverse party may not rest upon mere allegations or denials, but must instead set forth specific facts showing the existence of a genuine issue for trial." *McBride v. Walla Walla Cnty.*, 95 Wn. App. 33, 36, 975 P.2d 1029 (1999). But "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23

(1986)). The appellate court may affirm the trial court's ruling on any alternative ground that the record adequately supports. *Mudarri v. State*, 147 Wn. App. 590, 600, 196 P.3d 153 (2009).

B. The Boones' Negligent Investigation Claim Was Properly Dismissed Because They Fail to Show That the State Owed a Duty to Them Under RCW 26.44 Regarding the Prior Referrals or Conducted Any Negligent Investigation

A plaintiff seeking to prevail on a negligent investigation claim under RCW 26.44.050⁷ must prove that the duty to investigate an allegation of abuse was owed to him or her and that the State's investigation was negligent, i.e., that the investigation was biased or incomplete and resulted in a harmful placement. *M.W.*, 149 Wn.2d at 591. Here, the Boones do not challenge the State's investigation of the only referral alleging abuse of the twins. The Boones also cannot show that the State's duty to investigate the 1992 and January 2006 referrals extended to them, that the State's investigation of those referrals was negligent, or that the State's investigation of the referrals resulted in *any* placement decision for the twins, let alone a harmful one. Thus, even when the evidence is viewed in the light most favorable to them, the Boones fail to raise a genuine issue of material fact showing that the State conducted a biased or incomplete investigation resulting in a harmful placement decision.

⁷ The State refers to the current version of RCW 26.44.050 because during all times relevant to this case, the pertinent language of the statute has remained substantively unchanged. *See* Laws of 1987, Ch. 450, § 7.

1. The Cause of Action for Negligent Investigation of Child Abuse Is a Narrow One Requiring a Duty to Investigate and a Biased or Incomplete Investigation Resulting in a Harmful Placement

No common law cause of action for negligent investigation exists. *M.W.*, 149 Wn.2d at 595. A negligent investigation claim is a narrow statutory cause of action that arises from the State's duty under RCW 26.44.050 to investigate allegations of child abuse. *Tyner v. State*, 141 Wn.2d 68, 1 P.3d 1148 (2000); *M.W.*, 149 Wn.2d at 601. To prevail on a negligent investigation claim, a plaintiff must prove **both** (1) that DSHS conducted a biased or incomplete investigation **and** (2) that the investigation's deficits resulted in a "harmful placement" decision by the State. *M.W.*, 149 Wn.2d at 591; *Petcu v. State*, 121 Wn. App. 36, 58-59, 86 P.3d 1234 (2004). RCW 26.44 does not create a generalized duty of care to protect children from all harm that may arise during an investigation. *M.W.*, 149 Wn.2d at 598-99, 601-02.

Efforts to expand this narrow cause of action beyond its statutory confines have been repeatedly rejected by Washington courts.⁸

⁸ See *M.W.*, 149 Wn.2d at 600, 602 (rejecting argument that "DSHS has a general duty of care to act reasonably when investigating child abuse, which includes following correct procedures"); *Roberson v. Perez*, 156 Wn.2d 33, 46-48, 123 P.3d 844 (2005) (rejecting request to enlarge the negligent investigation cause of action to include harms caused by "constructive placement decisions"); *Blackwell v. DSHS*, 131 Wn. App. 372, 378-79, 127 P.3d 752 (2006) (rejecting expansion of the class who can sue for negligent RCW 26.44.050 investigations to include foster parents); *Braam v. State*, 150 Wn.2d 689, 711-12, 81 P.3d 851 (2003) (no private cause of action can be implied from RCW 74.13.250, RCW 74.13.280, or RCW 74.14A.050); *Aba Sheikh v. Choe*, 156

Recognizing the narrow scope of this cause of action, Washington courts have repeatedly “rejected the proposition that an actionable breach of duty occurs every time the state conducts an investigation that falls below a reasonable standard of care by, for example, failing to follow proper investigative procedures.” *Petcu*, 121 Wn. App. 36, 59; *M.W.*, 149 Wn.2d at 601-02. The narrow claim for negligent investigation is limited to remedying the specific harm contemplated by RCW 26.44.050: the harmful placement of a child. *M.W.*, 149 Wn.2d at 595.

2. The Boones Do Not Challenge the DSHS Investigation of the Only Referral Alleging Abuse of the Twins

Ms. Boone alleges that the twins were abused at Ms. Smith’s daycare. Ms. Boone made that referral in September 2006, almost eight months after the State summarily suspended Ms. Smith’s license and closed her daycare, and almost four months after the State revoked Ms. Smith’s license. CP 131-41; 160-65. DSHS investigated this referral and entered founded findings against Mr. Ali for abuse and against Ms. Smith for negligent treatment or maltreatment. CP 202-06. The Boones do not dispute that DSHS fully and properly investigated that referral. Because the Boones challenge only investigations under which

Wn.2d 441, 128 P.3d 574 (2006) (no private cause of action can be implied from three WAC regulations pertaining to dependent children).

the State owed them no actionable tort duty, and which the State properly conducted, their negligent investigation claim was properly dismissed.

3. The Prior Referrals Created No Duty to the Boones

The Boones claim that DSHS was negligent in its investigation of the 1992 and January 2006 abuse referrals and that but-for this alleged negligence, the State would have closed Ms. Smith's daycare before the twins were abused. CP 74; Boone Br. at 18-21. The Boones' argument is flawed for two reasons: RCW 26.44.050 does not create a blanket duty for DSHS to protect all children, and, on the facts here, the duty to investigate the prior referrals did not create a duty that extended to the Boones.

First, the duty under RCW 26.44.050 is owed to the child who is the subject of the referral. If during an investigation DSHS has reasonable cause to believe other children are at risk, the duty may extend to those children. RCW 26.44.030(2). But the State's limited duty to investigate under RCW 26.44.050 does not extend to children about whom no abuse is alleged or to children who are unidentified or unborn.

The cases on which the Boones rely do not support the proposition that the State owes a blanket duty for DSHS to protect all children. Boone Br. at 18-21. In *Tyner*, the issue before the court was not to which children that statute's limited duty extends, but whether the State "owes a duty of care in conducting an investigation of parental child abuse to the parent

suspected of such abuse.” *Tyner*, 141 Wn.2d at 76 (emphasis added). In *Yonker v. DSHS*, 85 Wn. App. 71, 930 P.2d 958 (1997), the court held that “RCW 26.44.050 creates a duty to children ‘who may be abused or neglected,’ not just to those who are abused by their parents. *Yonker*, 85 Wn. App. at 79 (emphasis added). Similarly, in *Lewis v. Whatcom County*, 136 Wn. App. 450, 149 P.3d 686 (2006), the court held that the duty to investigate under RCW 26.44 extended to alleged abuse by non-parents. *Lewis* 136 Wn. App. at 460. The *Lewis* court’s statement that RCW 26.44.050 creates a duty to all children who may be abused or neglected, regardless of the relationship between the child and his or her abuser, was made to clarify its holding that the duty to investigate is not limited to only where the alleged perpetrator is a parent. *Id.* Thus, contrary to the Boones’ claim, these cases do not extend a duty to investigate under RCW 26.44.050 to children about whom no abuse is alleged or to unidentified or unborn children.

Second, the 1992 and January 2006 referrals do not trigger a duty to the Boones. The Boones fail to show that the twins were attending Ms. Smith’s daycare when the prior referrals were made. It is undisputed that the 1992 referral concerning R.W. was made and investigated nine years before the twins were born. Similarly, the Boones offer no evidence - no declarations or daycare records - to show that the twins were

attending Ms. Smith's daycare in January 2006 when DSHS received the referral concerning M.T. and summarily suspended Ms. Smith's license. Tellingly, at that time, DSHS sent the parents of each child attending Ms. Smith's daycare, which Ms. Boone admits that she did not receive. CP 174, 198-99. Thus, the Boones fail to show that the twins were attending Ms. Smith's daycare when the prior referrals were made or that the State's duty to investigate the prior referrals extended to them.

4. DSHS Properly Investigated the 1992 and January 2006 Referrals

In addition to the prior referrals not triggering a duty to the Boones, the Boones also fail to show that DSHS negligently investigated those prior referrals.

The Boones' own evidence flatly refutes their assertion that DSHS negligently investigated the 1992 referral concerning R.W. and made "no finding' whatsoever." Boone Br. at 12. The record clearly shows that DSHS investigated this referral, interviewed R.W.'s mother and Ms. Smith, knew that R.W. was seen by two doctors and underwent a rectal examination yielding no sign of trauma, conferred with law enforcement regarding its parallel investigation, and made a finding that the allegations were unsupported by the evidence. CP 225-26. The Boones also submitted evidence that during this investigation, DSHS asked WSP

to run a background check on Mr. Ali and was told he had no record. CP 223.

The Boones also cannot show that DSHS negligently investigated the January 2006 referral concerning M.T. The Boones claim that after receiving this referral, “DSHS should have initiated a summary suspension and/or immediately informed all of the parents that were patronizing the facility” that Rasul was accused of child molestation. Boone Br. at 11. The Boones also erroneously claim that the State allowed Ms. Smith’s daycare to stay open until “May of 2006” and that “the twins continued to reside in the harmful environment for several avoidable and harmful months with their abusers.” Boone Br. at 10-12. The record refutes these claims.

The undisputed evidence shows that on January 27, 2006 - three days after receiving this referral - the State summarily suspended Ms. Smith’s license and closed her daycare, which never reopened. CP 136-41; CP 127, ¶ 10. Thus, no child could have attended or been harmed at the daycare after January 27, 2006, as the Boones claim they were. Boone Br. at 2, 11-12. The State also opposed Ms. Smith’s request to stay the suspension, and in March 2006, after a full hearing, the ALJ denied her request. CP 143-58. In May 2006, the State revoked Ms. Smith’s license. CP 160-65. Further, the Boones present no evidence to show that the twins were attending Ms. Smith’s daycare when the State

closed it on January 27, 2006. Even when taken in the light most favorable to them, the Boones cannot show that the State negligently investigated this referral.

5. No State Investigation Resulted in a Harmful Placement of the Boone Twins

The Boones implicitly acknowledge that their negligent investigation claim fails unless the State made a harmful placement decision regarding the twins. Boone Br. at 31. A harmful placement can occur if a child is removed from a non-abusive home, placed into an abusive home, or left in an abusive home by the State. *M.W.*, 149 Wn.2d at 597-98. But Ms. Boone placed the twins at the daycare, not the State.

In terms of placement, this case is similar to *Roberson*, 156 Wn.2d 33. There, a mother sent her son to live with relatives while DSHS investigated allegations that she had abused other children. The mother later sued DSHS for negligent investigation involving her son. The court held that the mother's claim failed as a matter of law because *she* - not DSHS - placed her son in the care of others. *Roberson*, 156 Wn.2d at 46-47 ("Extending the cause for action of negligent investigation to include so-called 'constructive placement' decisions would be problematic and is beyond the statute.")

Here, as in *Roberson*, Ms. Boone placed the twins in Ms. Smith's daycare. CP 74 ¶ 14. The twins were never in the care or custody of the State, nor did the State remove them from a non-abusive home, place them into an abusive home, or leave them in an abusive home. CP 127-28. Ms. Boone and Ms. Smith were responsible for the twins' daily care and monitoring. The only link between the State, Ms. Smith's daycare, and the Boones was the State's authority to license and regulate Ms. Smith's daycare for compliance with minimum licensing standards. RCW 74.15.010(5). The Boones cannot show that the State made any placement decision for the twins, let alone a harmful one.

In sum, the Boones cannot show that the State conducted a negligent investigation which resulted in a harmful placement of the twins. Dismissal of the Boones' negligent investigation claim was proper on these grounds as well and should be affirmed.

C. The State's Investigation Was Not the Factual or Legal Cause of The Boones' Claimed Injuries

The Boones also cannot show that the allegedly faulty investigation was the proximate cause of their claimed injuries. "To prevail [on a negligent investigation claim], the claimant must prove that the allegedly faulty investigation was the proximate cause of the harmful placement." *Petcu*, 121 Wn. App. at 56, citing *M.W.*, 149 Wn.2d at 597,

601. Proximate cause is a two-part analysis, consisting of “cause in fact, the ‘but for’ consequences of an act, and legal causation, whether liability should attach as a matter of law.” *Miller v. Likins*, 109 Wn. App. 140, 145, 34 P.3d 835 (2001) (other citations omitted). Thus, to prove causation, the Boones must prove that *the way in which the investigation was biased or incomplete* resulted in a harmful placement, i.e., was both the factual and legal cause of their alleged damages. The Boones cannot meet this burden.

1. The Boones Fail to Show That the State’s Investigation Was the Cause in Fact of Their Claimed Injuries

Cause in fact is the actual “but for” cause of an injury. *Minahan v. W. Washington Fair Ass’n*, 117 Wn. App. 881, 887-88, 73 P.3d 1019 (2003). Cause in fact “does not exist if the connection between an act and the later injury is indirect and speculative.” *Bordon v. Dep’t of Corr.*, 122 Wn. App. 227, 240, 95 P.3d 764 (2004). While cause in fact is usually a question for the jury, it can be determined by the Court “as a matter of law if reasonable minds could not differ.” *Taylor v. Bell*, 185 Wn. App. 270, 287, 340 P.3d 951 (2014). It is reversible error to deny summary judgment when speculation is required to find cause in fact. *Miller*, 109 Wn. App. at 146-47 (evidence that defendant’s actions *might* have caused plaintiff’s harm can only be characterized as speculation or conjecture and is insufficient to withstand summary judgment).

The Boones do not claim that the State negligently investigated the only referral concerning the twins. Instead, the Boones claim that the State negligently investigated prior referrals concerning other children and imply that but-for that alleged negligence, the State would have closed the daycare before the twins enrolled and they would not have been abused. Boone Br. at 12-15. This causation argument fails for several reasons.

First, the Boones offer no reliable evidence, through declarations, deposition testimony, or otherwise, to show what information, if any, the State would have learned had it investigated the prior referrals differently. Specifically, the Boones cannot show that the State had or would have had any legal basis to close Ms. Smith's daycare before the twins were enrolled in 2004/2005. At best, the Boones' cause in fact theory requires a chain of speculation insufficient to defeat summary judgment. *Bordon*, 122 Wn. App. at 260, *Miller*, 109 Wn. App. at 146-47.

Second, the Boones fail to show that their alleged harm was foreseeable by the State. The Washington Supreme Court has held that criminal conduct is generally unforeseeable and that unforeseeable intervening acts "break the chain of causation" between negligence and alleged injury. *Washburn v. City of Federal Way*, 178 Wn.2d 732, 761, 310 P.3d 1275 (2013). Here, the alleged abuse by Rasul and Mr. Ali was criminal conduct-unforeseeable to the State-that broke any causal chain

between the State and the Boones. Even when the evidence is taken in the light most favorable to them, the Boones fail to show that the State could have foreseen their alleged harm.⁹

Third, the Washington Supreme Court has held that “governmental entities are not liable if they act reasonably” or “if their negligence does not proximately cause the plaintiff’s injuries.” *Id.* Here, the State acted reasonably in its licensure of Ms. Smith and its investigations of the referrals concerning her daycare. Ms. Smith met the criteria for licensure and, before January 2006, the State had no legal basis to suspend, revoke, or deny her license. Before January 2006, the State did not know that Rasul lived at the daycare or that he might abuse children. Before September 2006, the State did not know that the twins had attended Ms. Smith’s daycare or that Mr. Ali might abuse children. And, the Boones did not allege any abuse at Ms. Smith’s daycare until nearly eight months after the State closed the daycare. CP 131-41.

Finally, the Boones’ reliance on *Estate of Shinaul M. v. DSHS*, 96 Wn. App. 765, 980 P.2d 800 (1999) is misplaced. There, a child died in a group home after a social worker recommended that placement. *Id.* at 801. The sole issue on appeal was whether the question of legal causation should

⁹ The Boones’ reliance on *Rikstad v. Holmberg*, 76 Wn.2d 265, 456 P.2d 355 (1969), is misplaced. Boone Br. at 30-32. That analysis of foreseeability of harm when a vehicle is operated in a negligent manner provides no guidance on whether the State conducted a negligent investigation or could have foreseen the harm alleged by the Boones.

go to the jury where the social worker had supplied materially misleading or incomplete information that led to that placement. *Id.* at 804. Here, the State did not place the twins in Ms. Smith's daycare, supply information to Ms. Boone about Ms. Smith's daycare, or participate in Ms. Boone's decision to place the twins in Ms. Smith's daycare. The Boones cannot show that the State was the factual cause of their claimed injuries.

2. The Boones Fail to Show That the State's Investigation Was the Legal Cause of Their Claimed Injuries

Even if the Boones could show that the State was the cause in fact of their claimed damages, they still could not show that the State was the legal cause. As the Washington Supreme Court has held:

The focus in the legal causation analysis is whether, as a matter of policy, the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability.

Schooley v. Pinch's Deli Market, Inc., 134 Wn.2d 468, 478-79, 951 P.2d 749 (1998) (internal citations omitted). Legal cause is a question of law for the court to decide. *Minahan*, 117 Wn. App. at 888.

Here, no policy supports extending liability to the State. First, extending liability to the facts of this case would not further the policies expressed in the child protection statutes. RCW 26.44.050 does not create a duty to conduct a "perfect" investigation or authorize the State to close a daycare based on unfounded allegations. Second, the Boones cannot

support their theory that, had the State investigated the prior referrals differently, Ms. Smith's daycare would have been closed before the twins enrolled. Thus, any claimed connection between the State's investigation of the referrals and the Boones' alleged injuries is too remote, insubstantial, and speculative to impose legal liability in this case.

This case is similar to *Wilbert v. Metro. Park Dist.*, 90 Wn. App. 304, 950 P.2d 522 (1998), where the court of appeals rejected the argument that a building operator's failure to close a facility sooner warranted a finding of legal cause. In *Wilbert*, a private organization hosted a dance at a building operated by the Tacoma Metropolitan Park District. *Id.* at 306. Alcohol was served, fights broke out, and Derrick Wilbert was killed. *Id.* at 306-07. His estate brought a wrongful death action, claiming that violations of the alcohol permit and Tacoma Metro's alcohol policies, along with the fighting, should have caused Tacoma Metro to end the event. *Id.* at 307. In rejecting this position, this Court cited the lack of evidence that either the victim or the assailants were drinking or otherwise violating Metro's alcohol policy, or that the fighting was caused by any violation of that policy. *Id.* at 311. The court concluded:

The Wilberts argue simply that if Metro had closed the facility earlier, the deadly assault would not have occurred. While this may be sufficient to establish cause in fact, proximate cause requires in addition a showing of legal causation.

Wilbert, 90 Wn. App. at 310-11 (other citations omitted). Because the Wilberts failed to produce evidence of foreseeability, the court properly held legal causation had not been established.

The same reasoning applies here. Like the Wilberts, the Boones imply that had DSHS investigated the prior referrals differently, the State would have closed Ms. Smith's daycare before they were enrolled (ignoring the fact that it had neither the authority nor a reason to do so), preventing the twins' alleged abuse. But under *Wilbert*, such reasoning fails even where events happen over a matter of hours, much less a matter of years. *Id.* As in *Wilbert*, on the facts of this case, no reasonable juror could conclude that the State was the cause in fact of the Boones' claimed injuries. Logic, common sense, justice, policy, and precedent require this Court to find no legal causation between the State's investigation and the Boones' claimed injuries.

D. The Boones' Argument Regarding Mandated Reporter Duty Fails Because No Such Duty Was Triggered Until Ms. Boone's September 2006 Referral

The Boones argue that summary judgment should have been denied because DSHS owed the twins a duty under the mandated reporting

statute “[u]pon recognition that Ms. Smith was permitting Mr. Ali to have unsupervised access to children of the daycare.” Boone Br. at 22. On the law, the Boones misstate when a mandatory reporting duty is triggered. And on the facts, no such duty arose until months after the twins were no longer at the daycare, defeating any DSHS liability.

Since before the twins were born, Washington’s mandated reporting statute has required DSHS employees to report suspected child abuse or neglect to DSHS or to law enforcement, as provided by statute. RCW 26.44.030(1)(a);¹⁰ Laws of 1999 Ch. 267 § 20. This duty to report is triggered when a DSHS employee, or other mandatory reporter, “has reasonable cause to believe that a child has suffered abuse or neglect.”¹¹ RCW 26.44.030(1)(a). “[I]f there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused” the reporting requirement extends to those other children as well. RCW 26.44.030(2) (emphasis added).¹² Washington courts have held that RCW 26.44.030(1)(a) supports a private cause of action against mandatory reporters who fail to report suspected abuse. *Beggs v. State*,

¹⁰ The Boones erroneously cite to RCW 26.44.050(1)(a). Boone Br. at 21. The State refers to the current version of RCW 26.44.030 because during all times relevant to this case, the pertinent language of the statute has remained substantively unchanged. See former RCW 26.44.030 (2004).

¹¹ The Boones erroneously identify the applicable category of mandatory reporter as “employee[s] of the department of early learning.” Boone Br. at 21 (quoting from the current RCW 26.44.030(1)(a)).

¹² The Boones erroneously cite to RCW 26.44.030(g)(2). Boone Br. at 22.

Dep't of Soc. & Health Servs., 171 Wn.2d 69, 77, 247 P.3d 421, 425 (2011); *Doe v. Corp. of President of Church of Jesus Christ of Latter-Day Saints*, 141 Wn. App 407, 423, 167 P.3d 1193, 1201 (2007).

First, the Boones misstate the legal trigger for the duty. They erroneously claim that DSHS had a duty to report “[u]pon recognition that Ms. Smith was permitting Mr. Ali to have unsupervised access to children of the daycare.” Boone Br. at 22. But such knowledge would not mandate a report. The duty is triggered only upon a mandatory reporter having “reasonable cause to believe that a child has suffered abuse or neglect.” RCW 26.44.030(1)(a). This reasonable cause standard is not satisfied merely by recognition that Mr. Ali had unsupervised access to children.

Second, the earliest time DSHS had any “knowledge” that Mr. Ali had access to children at the daycare, and thus had reasonable cause to believe that children may have been abused by Mr. Ali, was when Ms. Boone made her September 2006 referral. CP 131. That was eight months after DSHS summarily suspended Ms. Smith’s daycare license based on the January 2006 referral, which alleged abuse only by Rasul. CP 132, 136-41. The Boones do not identify any facts supporting any other basis for DSHS to suspect abuse by Mr. Ali.

Accordingly, prior to September 2006, DSHS did not owe, much less breach, any mandatory reporting duty to the twins. The mandatory

reporting statute provides no grounds to reverse dismissal of the Boones' claims on summary judgment.

E. The Boones' Argument Regarding "Negligent Licensing" Fails to Articulate an Actionable Tort Duty

1. The Court Should Accept the Boones' Concession They Are Not Bringing a Negligent Licensing Claim

The Boones in their Amended Complaint alleged a claim for "negligent licensing and monitoring." CP 65-66. This claim was dismissed on summary judgment. CP 602-03. On appeal, the Boones concede that they are not bringing a negligent licensing claim. Boone Br. at 22 ("The Boone family is not reliant upon such a claim [negligent licensing] for prevailing at summary judgment.") This Court should accept the Boones' concession and affirm dismissal of this non-cognizable claim without further consideration.

The Boones nevertheless contend that the daycare licensing statutes impose an actionable tort duty on DSHS. Boone Br. at 22-29. As a matter of law, for several independent reasons, this contention is incorrect.

2. The State Has Not Waived Sovereign Immunity for Daycare Licensing, Which Has No Private Analog

The Washington Legislature has waived the State's sovereign immunity, making it liable in tort to the same extent as private persons:

The State of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct **to the same extent as if it were a private person or corporation.**

RCW 4.92.090 (emphasis added).¹³ This circumscribed waiver stands against “the age-old principle that the sovereign's rules do not bind the sovereign itself unless the sovereign explicitly consent[s] to be bound.” *State v. LG Electronics, Inc.*, slip op. at 12 (No. 91263-7) (Jul 14, 2016). Accordingly, the State’s waiver of sovereign immunity is not absolute.

To fall within the RCW 4.92.090 waiver, the person asserting a tort claim against the State must “show that the conduct complained of constitutes a tort that would be actionable if it were done by a private person in a private setting.” *Edgar v. State*, 92 Wn.2d 217, 226, 595 P.2d 534 (1979) (action against the State alleging national guardsman was threatened, intimidated, and harassed by his superior officer was outside the State’s waiver of sovereign immunity because guardsman-plaintiff had drawn “no analogy between the conduct complained of and any conduct of a private individual which would be actionable” in tort). Where the government activity at issue has no analogous private sector activity and

¹³ The fact that the State’s waiver of sovereign immunity was never intended to subject the state to liability for purely governmental functions for which there is no private sector counterpart is thoroughly analyzed and outlined in the article Michael Tardif & Rob McKenna, *Washington State's 45-year Experiment in Governmental Liability*, 29 Seattle U. L. Rev. 1 (2005).

therefore no analogous private tort liability, the government activity is outside the scope of the RCW 4.92.090 waiver and liability is barred.

There is no private sector activity analogous to the State's licensing of daycares. The licensing and regulation of businesses and professions, including daycares, is purely a governmental function. Private persons do not promulgate regulations or grant and revoke licenses in the public interest. As there is no private sector analogue to daycare licensing, there is no private sector liability for negligent daycare licensing. Therefore, the State's general waiver of sovereign immunity contained in RCW 4.92.090 does not extend to tort claims for negligent daycare licensing. See *Morgan v. State*, 71 Wn.2d 826, 831, 430 P.2d 947 (1967) (sovereign immunity not waived by RCW 4.92.090 for claim that State should have fenced highway to exclude wandering children because no such private duty owed). Thus liability is barred by sovereign immunity.

3. The Public Duty Doctrine Provides That Regulatory Statutes like the Daycare Licensing Statutes Do Not Create an Actionable Tort Duty

The public duty doctrine embodies the principle that regulatory and social welfare legislation is generally intended to improve the area being regulated *as a whole*, not to charge the government with a duty to protect the interests of particular citizens. "The policy underlying the public duty doctrine is that legislative enactments for the public welfare

should not be discouraged by subjecting a governmental entity to unlimited liability.” *Taylor v. Stevens County*, 111 Wn.2d 159, 170, 759 P.2d 447 (1988); *see also Donohoe v. State*, 135 Wn. App. 824, 834, 142 P.3d 654 (2006). The doctrine’s premises are that (1) it is better to have some regulation to protect the public (even if imperfect) than to have no protection for the public, and (2) government’s well-intentioned efforts to improve conditions in regulated business and industry should not be discouraged by imposing liability for imperfect regulation. *See Donohoe*, 135 Wn. App. at 834 (citing *Taylor*, 111 Wn.2d at 170).

Accordingly, the public duty doctrine provides that “regulatory statutes impose a duty on public officials which is owed to the public as a whole, and that such a statute does not impose any actionable duty that is owed to a particular individual.” *Honcoop v. State*, 111 Wn.2d 182, 188, 759 P.2d 1188 (1988). This rule “is almost universally accepted regardless of the exact nature of the statute.” *Baerlein v. State*, 92 Wn.2d 229, 231, 595 P.2d 930 (1979) (State Securities Act); *see also Honcoop*, 111 Wn.2d at 188 (livestock inspection program); *Taylor*, 111 Wn.2d at 166 (building codes); *Donohoe*, 135 Wn. App. at 833 (nursing homes).

Washington’s daycare licensing statutes comprise a comprehensive regulatory scheme that is subject to the public duty doctrine. Former RCW 74.15 (2004). The Boones do not contest that daycare licensing is a

regulatory scheme, nor could they. Rather, they argue that the doctrine's legislative intent exception applies, imposing an actionable duty on DSHS in situations of negligent daycare licensing.

4. The Legislative Intent Exception to the Public Duty Doctrine Does Not Apply to Daycare Licensing

There are four recognized exceptions to the public duty doctrine: (1) legislative intent, (2) special relationship, (3) failure to enforce, and (4) volunteer rescue. *Donohoe*, 135 Wn. App. at 834. These exceptions “indicate when a statutory or common law duty exists.” *Osborn v. Mason County*, 157 Wn.2d 18, 28, 134 P.3d 197 (2006) (quoting *Taylor*, 111 Wn.2d at 166). Unless an exception applies, the public duty doctrine dictates there is no liability. *Donohoe*, 135 Wn. App. at 834. The Boones erroneously contend that the legislative intent exception applies to daycares.¹⁴ Boone Br. at 23 (“The express intent of the Legislature under RCW 43.215 and formerly enacted 74.13 and 74.15 . . . dictate that such a duty is owed.”).¹⁵

The legislative intent exception “applies ‘when the terms of a legislative enactment evidence an intent to identify and protect a particular and circumscribed class of persons.’” *Donohoe*, 135 Wn. App. at 844

¹⁴ The Boones do not argue that any of the other three exceptions apply to licensing and monitoring of daycares. See Boone Br. at 22-29.

¹⁵ The Boones’ citation to RCW 43.215 is misplaced. When the twins attended Ms. Smith’s daycare in 2004-2005, daycare licensing was codified at RCW 74.15.

(quoting *Bailey v. Town of Forks*, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987)). Where a comprehensive regulatory scheme is at issue, a cause of action must be explicitly provided in legislation and not merely implied. See *Taylor*, 111 Wn.2d at 166; *Baerlein*, 92 Wn.2d at 231; *Donohoe*, 135 Wn. App. at 833. “To ascertain legislative intent, courts look to the statute’s declaration of purpose.” *Donohoe*, 135 Wn. App. at 844.

The daycare licensing statutes do not evidence a legislative intent to identify and protect a particular and circumscribed class of persons. The statute requiring DSHS to regulate daycares, former RCW 74.15, was part of a broad licensing and regulatory scheme that applied to several types of facilities which provided care to children, expecting mothers, and developmentally disabled persons. The purposes underlying this broad scheme were set forth as follows:

The purpose of RCW 74.15 and RCW 74.13.031 is:

- (1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;
- (2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups;

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies¹⁶ as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons.

Former RCW 74.15.010 (2004).¹⁷ Former RCW 74.15 (2004) contains no language explicitly creating a private cause of action in tort for recipients of daycare services. To the contrary, the multiple purposes found in former RCW 74.15.010 show that the intent of the legislature was to make daycares safer by requiring DSHS to establish minimum standards for licensure and regulation in an effort “to assure the users of such agencies, their parents, *the community at large*, and the agencies themselves that adequate minimum standards are maintained” by such facilities. Former RCW 74.15.010(5) (2004).

¹⁶ At all times relevant to this case, former RCW 74.15.020 defined “agency” to include daycares and any person operating a daycare.

¹⁷ The fact that this purpose section addresses both RCW 74.15 and RCW 74.13.031 illustrates the broad scope of this regulatory scheme: these statutes address not only children in daycare, but also expectant mothers; developmentally disabled persons; foster children; runaway, dependent, or neglected children; and juveniles committed to confinement under supervision of DSHS.

The State's obligation to license daycares is parallel to that analyzed in *Donohoe*, which involved the licensing and regulation of nursing homes. In *Donohoe*, this Court observed that the purpose of the nursing home statutes was to “provide for the development, establishment, and enforcement of standards for the maintenance and operation of nursing homes, which . . . will promote safe and adequate care and treatment of the individuals therein” *Donohoe*, 135 Wn. App. at 846 (quoting RCW 18.51.005) (emphasis in original). The court rejected the argument that this language created an actionable DSHS duty to protect nursing home residents. Rather, to fulfill the purpose of the underlying nursing home statutes, the legislature imposed upon DSHS the duty to promulgate regulations for licensing nursing homes to serve the public health, safety, and welfare. *Id.* “DSHS’s statutory duty under RCW 18.51 is essentially limited to licensing and overseeing nursing homes for compliance with applicable standards.” *Id.* at 847.

The same holds true for the State’s licensing of daycares. The Legislature made DSHS responsible “to adopt and publish minimum requirements for licensing;” to “issue, revoke, or deny licenses;” and to “inspect agencies periodically to determine whether or not there is compliance.” Former RCW 74.15.030 (2004). As with nursing home licensing, the Legislature established a variety of sanctions from which

DSHS could select to obtain compliance from daycares with applicable standards. Former RCW 74.15.090-.150 (2004). Just as *Donohoe* found with DSHS' licensing and regulation of nursing homes, DSHS' "statutory duty under [former] chapter [74.15] is essentially limited to licensing and overseeing [daycares] for compliance with applicable standards." *Donohoe*, 135 Wn. App. at 847.

5. The Boones' Contention that the Legislative Intent Exception Applies is Flawed and Unpersuasive

In a futile attempt to distinguish *Donohoe*, the Boones argue that that, as compared to nursing home licensing, "DSHS's role is more active and controlling" with respect to "children placed in licensed child care facilities." Boone Br. at 24 (emphasis added). This ignores that DSHS no more "places" children as part of licensing daycares than it places residents as part of licensing nursing homes. Nor did the State ever "place" the Boone twins at Ms. Smith's day care. *See supra* at § IV(B)(5).

The Boones also essentially argue that the purpose of the daycare licensing statutes should be determined exclusively by the single phrase "safeguard the health, safety, and well-being of children." Boone Br. at 24 (quoting former RCW 74.15.010(1) (2004)). To distinguish *Donohoe*, the Boones argue that case turned on the term "promote" in the declared purpose of the nursing home licensing statutes while the purpose of the

daycare licensing statutes turns on “safeguard.” Boone Br. at 23-24. The Boones offer no explanation why their chosen phrase should be the Court’s unique focus, among all of the purposes the Legislature identified in former RCW 74.15.010. In particular, the Boones do not explain why this Court should ignore the licensing-specific declaration of purpose in former RCW 74.15.010(5). Moreover, the phrase to “safeguard the health, safety, and well-being of children, expectant mothers, and developmentally disabled persons receiving care away from their own homes” (former RCW 74.15.010(1) (2004)) is itself strongly analogous to the language *Donohoe* deemed not to satisfy the legislative intent exception to the public duty doctrine. *Donohoe*, 135 Wn. App. at 846.

As for their statutory construction argument, the Boones argue that because the term “safeguard” in the purpose of the regulatory scheme addressing child abuse (RCW 26.44) has been held to satisfy the legislative intent exception, therefore the use of “safeguard” in the purpose of the daycare licensing statutes must do likewise. Boone Br. at 25-27 (“the appellate courts have already determined that usage of the term ‘**safeguard**’ in relation to children, their parents, and child caretakers gives rise to an actionable tortuous [sic] duty of care and Legislatively intended exception to the public duty doctrine.”) (emphasis in original). The Court should not credence the Boones’ contention that mere use of a

single word in two different statutory schemes satisfies the requirement of the legislative intent exception that a cause of action be explicitly provided in legislation and not merely implied. *See Taylor*, 111 Wn.2d at 166.

Nor do the Boones accurately characterize how RCW 26.44.010 has been held to support a legislative intent exception to the public duty doctrine. For example, in *Yonker*, which the Boones cite for their flawed proposition, actually examined RCW 26.44.010 in the broader context of RCW 26.44, which addresses abuse of children. *Yonker*, 85 Wn. App. at 78. In that context, wherein the Legislature “provided for DSHS to receive reports of [child abuse] incidents” and “requires DSHS to investigate reports of possible child abuse,” the purpose that “*protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children*” satisfied the legislative intent exception to the public duty doctrine. *Id.* (quoting RCW 26.44.010).

As for *Tyner*, the Boones are incorrect that it held “that the Legislative intent of RCW 26.44 (“to **safeguard**”) is to create actionable duty of care.” Boone Br. at 25. The *Tyner* majority did examine part of RCW 26.44.010, but it did not consider the portion containing the term “safeguard.” *Tyner*, 141 Wn.2d at 78, 80. And while the dissent did consider “safeguard” as used in RCW 26.44.010, it did so to argue against

the duty to parents recognized by the majority. *Tyner*, 141 Wn.2d at 91-92 (Talmadge, J., dissenting).

In sum, the purposes set forth in former RCW 74.15.010 demonstrate the legislature's intent to create a comprehensive licensing and regulatory scheme governing private and public facilities providing care for children in a variety of circumstances-a scheme intended to benefit children, parents, the facilities themselves, and the community at large. The statute does not carve out a narrow and circumscribed class for express protection. The legislative intent exception therefore does not apply. Dismissal on summary judgment should be affirmed.

F. The Boones' Argument Regarding Background Check Mandate Fails to Articulate an Actionable Tort Duty

1. The State Has Not Waived Sovereign Immunity for Background Checking, Which has No Private Analog

Just as the State has not waived sovereign immunity in tort under RCW 4.92.090 for daycare licensing, neither has it waived sovereign immunity for conducting background checks as part of that licensing function. There is no private sector activity analogous to the State conducting background checks as part of licensing daycares. Accordingly there is no analogous private sector liability, and the State's waiver of sovereign immunity in RCW 4.92.090 does not extend to tort claims for negligent background checks. *See Morgan*, 71 Wn.2d at 831.

2. Under the Public Duty Doctrine, Conducting Background Checks Pursuant to Daycare Licensing Does Not Give Rise to Liability

The Boones argue that DSHS owed a duty to protect the twins from Mr. Ali because the “statutory scheme requires that DSHS conduct thorough background checks on individuals that may have unsupervised access to children at daycares.”¹⁸ Boone Br. at 16 (citing former RCW 43.43.832 (1989)). But as the Boones concede, the only “statutory scheme” involving background checks that could be relevant in this context is that governing daycare licensing. Boone Br. at 29 (“the ‘negligent licensing’ argument is at issue [through] mandating that DSHS properly conduct background checks at daycares.”) Pursuant to the public duty doctrine, the daycare licensing statutes do not give rise to liability, as DSHS’ “statutory duty under [former] chapter [74.15] RCW is essentially limited to licensing and overseeing [daycares] for compliance with applicable standards.” *Donohoe*, 135 Wn. App. at 847. *See supra* § IV(E)(4).

Notwithstanding this, the Boones contend that as to background checks specifically, the legislative intent exception to the public duty doctrine is satisfied by “the obligation to conduct background checks under RCW 43.43.832 and also WAC 388-155-070(c)(ii); WAC 388-06-0130.”

¹⁸ The Boones are incorrect that former RCW 43.43.832 (1989) requires background checks “on individuals that may have unsupervised access to children at daycares.” Neither do the 1998 and 2001 versions of that statute.

Boone Br. at 17. This contention fails for at least two reasons. First, “[t]o ascertain legislative intent, courts look to the statute’s declaration of purpose.” *Donohoe*, 135 Wn. App. at 844. Neither RCW 43.43.832 nor the two cited rules declare the purpose for daycare licensing or conducting background checks within that regulatory scheme. The Boones make no reasoned argument to establish the point. They merely assert, without authority, that “these [unspecified] duties are owed to the children in child [c]are facilities, and not to the general public.” Boone Br. at 17.

Second, in support of their contention, the Boones quote from RCW 43.43.832¹⁹ and WAC 388-06-0130.²⁰ Boone Br. at 15, 17. But even if this statute and rule were properly examined to ascertain the purpose of the regulatory scheme, neither “carve out a particular and circumscribed class of persons for express protection” as is required to satisfy the legislative intent exception. *Burnett v. Tacoma City Light*, 124 Wn. App. 550, 562-63, 104 P.3d 677 (2005). Both refer generally to children and developmentally disabled, a broad generic group, not to a particular and circumscribed class. And both define aspects of the background check process, not a duty of express protection. RCW 43.43.832 requires DSHS to “consider . . . adequate information” when determining who to license

¹⁹ The Boones do not clarify from what version of RCW 43.43.832 they quote.

²⁰ WAC 388-06-0130 did not take effect until October 1, 2001, later than many of the re-licensing events for Ms. Smith’s daycare that the Boones allege required DSHS to background check Mr. Ali.

and WAC 388-06-0130 makes clear that the background check process applies to new and renewal licenses. Boone Br. at 15, 17. As the Boones otherwise offer no reasoned argument or authority to support their legislative intent argument, they fail to establish the exception applies.

3. DSHS Was Not Required to Conduct a Background Check on Mr. Ali as the Boones Contend

Finally, contrary to the Boones' assertion, neither RCW 43.43.832 nor the cited rules required DSHS to conduct a background check on Mr. Ali in February 1995 or the "licensing inquiries" thereafter in 1998, 2001, and 2004. Boone Br. at 1, 4, 7, 9.

First, the Boones argue that a background check was mandated in February 1995 when DSHS was informed that Mr. Ali was Ms. Smith's "husband and also the owner and an adult resident of" the daycare. Boone Br. at 1, 7. But former RCW 43.43.832(4) (1989) required DSHS to conduct background checks only "when considering persons *for state positions directly responsible* for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults *or when licensing or authorizing such persons or agencies.*"²¹ As there is no

²¹ During the time period relevant to this case, this provision in former RCW 43.43.832 (1989) was amended twice, in 1997 and again 2000. *See* Laws of 1997 Ch. 392 § 524; Laws of 2000 Ch. 87 § 1. However, the pertinent language regarding background checks for persons working with children remained substantively unchanged. *See* statutory appendix: former RCW 43.43.832 (1998); former RCW 43.43.832 (2001).

evidence that DSHS was considering Mr. Ali for any “state position” or licensing him, Mr. Ali was not within the statute’s mandate.

The Boones also erroneously allege that WAC 388-155-070(1)(c)(ii) required DSHS to conduct background checks on Mr. Ali. Boone Br. at 4-5, 7, 17. But that rule required DSHS to conduct background checks on “each *applicant*, assistant, volunteer, or *member of the household* sixteen years of age or older having *unsupervised or regular access* to the child in care.” WAC 388-155-070(1)(c)(ii) (emphasis added).²² Likewise, the requirement of WAC 388-06-0130 focused on persons having “unsupervised access” to children. Neither required DSHS to conduct background checks on adults not living in the home or not having unsupervised or regular access to daycare attendees.

The uncontroverted evidence refutes the Boones’ unsupported claim that Mr. Ali lived in the home where Ms. Smith operated her daycare, and that DSHS knew this. First, in nearly 20 years of licensure, Ms. Smith only once (in 1995) gave DSHS any indication that Mr. Ali might live in the home, when she identified him as her husband on a relicensing application. CP 207. Second, Ms. Smith and Mr. Ali gave sworn testimony that Mr. Ali did not live in the home. CP 143-158. There is also Ms. Smith’s

²² From 1992 to 2004, the pertinent language of WAC 388-155-070(1)(c)(ii) remained substantively unchanged. See former WAC 388-155-070(1)(c)(ii) (1992) and former 388-155-070(1)(c)(ii) (2004).

January 2006 statement that “[Mr. Ali] was there off and on but stated he also had another place” and the State licensor’s conclusion that “it appears that [Mr. Ali] is back in the home or will be moving in shortly.” CP 211-12; CP 138. Third, during the adjudication of Ms. Smith’s license suspension, the ALJ found that Mr. Ali did not live in the home and identified several other places where Mr. Ali lived during the years Ms. Smith was licensed. CP 149-52, 155 (Findings of Fact and Conclusion of Law).

The undisputed evidence also refutes the Boones’ unsupported speculation that Mr. Ali had regular, unsupervised access to daycare attendees. CP 196. First, the trial court relied on the Boones’ own evidence that Mr. Ali was not around children unsupervised. CP 212. Second, in Answer to the Amended Complaint, Ms. Smith stated that Mr. Ali “was at no time responsible for or participated in any child care activities associated with” her daycare. CP 94, § III, ¶ 1. Third, the Boones fail to present any evidence - no declarations from them or other parents - to show that Mr. Ali had regular, unsupervised access to daycare children.

In an attempt to paint Mr. Ali as a career criminal, the Boones claim that “Mr. Ali possessed disqualifying arrests and convictions dating back to

1990.” Boone Br. at 10. The evidence refutes this as well.²³ First, when DSHS requested a background check on Mr. Ali during the 1992 investigation concerning R.W., it was advised that Mr. Ali had no record. CP 223. Second, and more notably, the record shows Mr. Ali having only the following Washington convictions: in 2000, resisting arrest (CP 520-27), obstructing a public servant (CP 536-40), and three counts of violation of civil harassment protection order (against a police officer) (CP 513-19; 528-35); and in 2002, violation of civil harassment protection order (against a police officer) (CP 513-19).²⁴ None of these convictions are for sex offenses, none involve children or Ms. Smith’s daycare, none existed in 1992, 1995, or 1997, when the Boones say the State “should have” run background checks on Mr. Ali, and none existed in 1995, the only time Ms. Smith indicated that Mr. Ali might live in the home.

The Boones also claim that “DSHS is mandated to conduct a LESA background check of all the individuals that might have

²³ Notably, the Boones base this claim on unauthenticated records from over 20 court cases attached to the declaration of their standard of care expert Barbara Stone. CP 240-562. These records should be given no weight. First, Ms. Stone’s declaration does not attest to the truth or accuracy of those records, contrary to CR 56(e). CP 191-201. Second, even if the records were properly authenticated and accurate, they do not all involve Mr. Ali. CP 271-305; 453-98. Third, the bulk of those records are from at least eight dismissed criminal cases (including one for spitting in public) (CP 306-08; 541-50; 553-62), at least three civil lawsuits (CP 309-54; 315-25, 337-38, 341-452; 499-502), a dismissed civil debt collection against Mr. Ali for less than \$700 (CP 503-12), a criminal case against Mr. Ali’s older son (CP 290-302), and two guardianships Ms. Smith and Mr. Ali filed when they wanted to leave Washington and their sons did not. CP 271-89; 303-05; 453-98.

²⁴ The parties incorrectly told the trial court that Mr. Ali had a conviction for assault in the third degree from 2001. CP 194, 583. Upon closer review, the Boones’ own exhibit shows that charge was dismissed. CP 240-41.

unsupervised access to children in any daycare facility,” relying again on RCW 43.43.832 and WAC 388-155-070(1)(c)(ii). Boone Br. at 7. But neither provision mentioned LESA, much less required a “LESA check.” Further, the Boones fail to rebut the fact that LESA reviews only those records maintained by the Tacoma and Lakewood Police Departments and the Pierce County Sheriff’s Department. CP 563-64, 575, 577. Thus, a “LESA check” could yield fewer results than a statewide background check by the Washington State Patrol, i.e., the statewide background check WSP ran on Mr. Ali in 1992, revealing no record. CP 223. The Boones fail to show that DSHS was required to conduct any checks on Mr. Ali through LESA.

In sum, neither the statutes, the administrative code, nor the evidence supports the Boones’ claim that DSHS was required to conduct a background check on Mr. Ali while Ms. Smith was licensed.

G. The Boones’ Argument Regarding Assumption of Duty Fails to Articulate an Actionable Tort Duty

Finally, the Boones devote a single paragraph to their contention that the special relationship exception to the public duty doctrine is satisfied because “DSHS assumed responsibility for conducting background checks, overseeing daycares, investigating child abuse allegations, and warning families of the ongoing abuses (except the Boone

family) in relation to the [alleged] overt indications that Mr. Ali should not be near children” Boone Br. at 29. The special relationship exception actually consists of two analytically distinct exceptions: one based on express assurance and the other derived from section 315 of the *Restatement (Second) of Torts*. The Boones do not identify which of the two types of special relationship they contend was created, nor do they provide any argument as to how the elements of either type is met. This Court need not consider issues on appeal that are not supported by argument and citation of authority. RAP 10.3(a)(6); *McKee v. Am. Home Products, Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045, 1047 (1989). Nor does either type of special relationship exception apply here.

The express assurance special relationship exception arises if “(1) there is direct contact or privity between the public official and the injured plaintiff which sets the latter apart from the general public, and (2) there are express assurances given by a public official, which (3) give[] rise to justifiable reliance on the part of the plaintiff.” *Donohoe*, 135 Wn. App. at 835 (quoting *Beal v. City of Seattle*, 134 Wn.2d 769, 785, 954 P.2d 237 (1998)). “An ‘express assurance’ occurs where an individual makes a direct inquiry and the government clearly sets forth incorrect information, the government intends that the individual rely on this information, and the individual does rely on it ‘to his detriment.’” *Donohoe*, 135 Wn. App. at

835 (quoting *Babcock v. Mason Cnty. Fire Dist. No. 6*, 144 Wn.2d 774, 789, 30 P.3d 1261 (2001)). The Boones do not allege that the State made express assurances to them in licensing Ms. Smith's daycare, nor could they. Thus this exception cannot apply.

The other special relationship exception derives from the *Restatement (Second) of Torts* § 315, and represents an exception to the general rule that an actor has no duty to prevent a third person from injuring another. *Donohoe*, 135 Wn. App. at 836. This exception may arise where either ““(a) a special relationship exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relationship exists between the actor and the other which gives to the other a right to protection.”” *Id.* (quoting *Restatement (Second) of Torts* § 315 (1965)). Neither existed here.

The “relationship with the third person” variation arises only where there is a definite, established, and continuing relationship between the defendant and the third party. *Taggart v. State*, 118 Wn.2d 195, 218, 822 P.2d 243 (1992). The Boones do not allege, and there is no evidence to support a special relationship between the State and Mr. Ali of any kind, much less one requiring the State to control Mr. Ali's conduct.

Nor is there a relationship between the State and Ms. Smith's daycare giving rise to a duty to control Ms. Smith's conduct. Here, as in

Donohoe, DSHS's role is limited to licensing and monitoring for regulatory compliance. DSHS was not responsible for the day-to-day supervision of the children, and it is the licensee's obligation to remain in compliance with regulations on a day-to-day basis. WAC 388-155-120(3). The State's relationship with daycares is no different than its relationship with any other licensed agency, be it nursing homes, doctors, lawyers, or any other profession or industry requiring licensure and regulation for the health, welfare and safety of the general public. Mere "regulatory control over a third party is not sufficient to establish the necessary control that can give rise to an actionable duty." *Honcoop*, 111 Wn.2d at 193.

As to the (b) variation, "relationship with the other," only when there is an *established* special relationship between the actor-defendant and the injured other-plaintiff, typically custodial or supervisory in nature, has the defendant generally been held to owe a duty to protect the plaintiff from foreseeable harm by a third party. *Donohoe*, 135 Wn. App. at 837. For example, Washington courts have recognized this type of special relationship, and corresponding duty, between certain individuals and schools, common carriers, hotels, hospitals, business establishments, taverns, possessors of land, and custodial mental institutions. *Id.* The Boones do not allege, and there is no evidence to support, such a special relationship between the State and the Boones. The State did not place the

twins in Ms. Smith's daycare. The twins were private clients of Ms. Smith, placed in her care solely by Ms. Boone. CP 48, ¶ 14; CP 127-28, ¶ 11. This Court should reject the Boones' bare assertion that a special relationship existed that imposed a duty on DSHS.

V. CONCLUSION

The Boones' negligent investigation claim was properly dismissed because neither the 1992 nor the January 2006 referrals created a duty to the Boones, neither investigation was biased or incomplete, the State made no placement decision (much less a harmful one) regarding the twins, and the manner in which the Boones claim the State's investigation was negligent was not the proximate cause of their alleged damages.

The Boones' claim regarding mandated reporting duty should be dismissed because DSHS did not have reasonable cause to believe that Mr. Ali might abuse children at the daycare until September 2006, when Ms. Boone told DSHS that Mr. Ali had abused the twins. Before then, DSHS did not know that Mr. Ali might live in the home or have unsupervised access to children, nor would that knowledge alone trigger the duty.

The Boones' "negligent licensing and monitoring" claim should be dismissed because the Boones concede they do not make this argument on appeal. The Boones' claims for "negligent licensing and monitoring" and

negligent failure to conduct a background check should be dismissed because the State has not waived sovereign immunity for daycare licensing or background checks related to daycare licensing, the public duty doctrine bars tort liability for actions relating to regulatory licensing of daycares and the alleged negligent failure to conduct background checks in the context of daycare licensing, and no exception to the public duty doctrine applies. Further, DSHS was not required to conduct a background check on Mr. Ali as the Boones claim.

Finally, the Boone's claim regarding assumption of duty should be dismissed because they fail to show that a special relationship existed which imposed a duty on DSHS.

This Court should affirm dismissal in favor of the State.

RESPECTFULLY SUBMITTED this 5th day of August, 2016.

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CERTIFICATE OF FILING AND SERVICE

I certify that on the 5th day of August 2016, I electronically filed the foregoing document in the Washington Court of Appeals, Division II and served a copy of the foregoing on:

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APPENDIX

RCW 4.92.090

Tortious conduct of state—Liability for damages.

The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.

[1963 c 159 § 2; 1961 c 136 § 1.]

RCW 26.44.010**Declaration of purpose.**

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children. When the child's physical or mental health is jeopardized, or the safety of the child conflicts with the legal rights of a parent, custodian, or guardian, the health and safety interests of the child should prevail. When determining whether a child and a parent, custodian, or guardian should be separated during or immediately following an investigation of alleged child abuse or neglect, the safety of the child shall be the department's paramount concern. Reports of child abuse and neglect shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions. This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

[2012 c 259 § 12; 1999 c 176 § 27; 1987 c 206 § 1; 1984 c 97 § 1; 1977 ex.s. c 80 § 24; 1975 1st ex.s. c 217 § 1; 1969 ex.s. c 35 § 1; 1965 c 13 § 1.]

NOTES:

Family assessment response evaluation—Family assessment response survey—2012 c 259: See notes following RCW 26.44.260.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Severability—1984 c 97: See RCW 74.34.900.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(13) "Child protective services section" means the child protective services section of the department.

(14) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(15) "Negligent treatment or maltreatment" means an act or omission that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment.

(16) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to

provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(17) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(18) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(19) "Unfounded" means available information indicates that, more likely than not, child abuse or neglect did not occur. No unfounded allegation of child abuse or neglect may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW. [2000 c 162 § 19; 1999 c 176 § 29; 1998 c 314 § 7. Prior: 1997 c 386 § 45; 1997 c 386 § 24; 1997 c 282 § 4; 1997 c 132 § 2; 1996 c 178 § 10; prior: 1993 c 412 § 12; 1993 c 402 § 1; 1988 c 142 § 1; prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Findings—1997 c 132: "The legislature finds that housing is frequently influenced by the economic situation faced by the family. This may include siblings sharing a bedroom. The legislature also finds that the family living situation due to economic circumstances in and of itself is not sufficient to justify a finding of child abuse, negligent treatment, or maltreatment." [1997 c 132 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Interviews of children—Records—Risk assessment process. (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment,

any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(c) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(d) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's wel-

fare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of alleged abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of alleged child abuse and neglect, the department or investigating law enforcement

agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

(14) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(15) The department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which: (a) The department believes there is a serious threat of substantial harm to the child; (b) the report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or (c) the department has, after investigation, a report of abuse or neglect that has been founded with regard to a member of the household within three years of receipt of the referral. [2003 c 207 § 4. Prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Severability—1987 c 512: See RCW 18.19.901.

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.031 Unfounded referrals—Report retention.

To protect the privacy in reporting and the maintenance of reports of nonaccidental injury, neglect, death, sexual abuse, and cruelty to children by their parents, and to safeguard against arbitrary, malicious, or erroneous information or actions, the department shall not maintain information related to unfounded referrals in files or reports of child abuse or neglect for longer than six years except as provided in this section.

At the end of six years from receipt of the unfounded report, the information shall be purged unless an additional report has been received in the intervening period. [1997 c 282 § 1.]

26.44.032 Legal defense of public employee. In cases in which a public employee subject to RCW 26.44.030 acts in good faith and without gross negligence in his or her reporting duty, and if the employee's judgment as to what constitutes reasonable cause to believe that a child has suffered abuse or neglect is being challenged, the public employer shall provide for the legal defense of the employee. [1999 c 176 § 31; 1988 c 87 § 1.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

26.44.035 Response to complaint by more than one agency—Procedure—Written records. (1) If the department or a law enforcement agency responds to a complaint of alleged child abuse or neglect and discovers that another agency has also responded to the complaint, the agency shall notify the other agency of their presence, and the agencies shall coordinate the investigation and keep each other apprised of progress.

(2) The department, each law enforcement agency, each county prosecuting attorney, each city attorney, and each court shall make as soon as practicable a written record and shall maintain records of all incidents of suspected child abuse reported to that person or agency.

(3) Every employee of the department who conducts an interview of any person involved in an allegation of abuse or neglect shall retain his or her original written records or notes setting forth the content of the interview unless the notes were entered into the electronic system operated by the

RCW 26.44.030

Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process.

*** CHANGE IN 2016 *** (SEE 2440-S.SL) ***

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombuds or any volunteer in the ombuds's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Organization" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group engaged in a trade, occupation, enterprise, governmental function, charitable function, or similar activity in this state whether or not the entity is operated as a nonprofit or for-profit entity.

(iii) "Reasonable cause" means a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.

(iv) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(v) "Sexual contact" has the same meaning as in RCW 9A.44.010.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders

are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW **26.44.040**.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW **28B.10.016**, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW **26.44.040**.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency, including military law enforcement, if appropriate. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW **26.44.040** to the proper county prosecutor or city attorney for appropriate action whenever the law

enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

- (a) The department believes there is a serious threat of substantial harm to the child;
- (b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or
- (c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) Upon receiving a report of alleged abuse or neglect, the department shall use one of the following discrete responses to reports of child abuse or neglect that are screened in and accepted for departmental response:

- (i) Investigation; or
- (ii) Family assessment.

(b) In making the response in (a) of this subsection the department shall:

(i) Use a method by which to assign cases to investigation or family assessment which are based on an array of factors that may include the presence of: Imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics, such as the type of alleged maltreatment and the age of the alleged victim. Age of the alleged victim shall not be used as the sole criterion for determining case assignment;

(ii) Allow for a change in response assignment based on new information that alters risk or safety level;

(iii) Allow families assigned to family assessment to choose to receive an investigation rather than a family assessment;

(iv) Provide a full investigation if a family refuses the initial family assessment;

(v) Provide voluntary services to families based on the results of the initial family assessment. If a family refuses voluntary services, and the department cannot identify specific facts related to risk or safety that warrant assignment to investigation under this chapter, and there is not a history of reports of child abuse or neglect related to the family, then the department must close the family assessment response case. However, if at any time the department identifies risk or safety factors that warrant an investigation under this chapter, then the family assessment response case must be reassigned to investigation;

(vi) Conduct an investigation, and not a family assessment, in response to an allegation that, the department determines based on the intake assessment:

(A) Poses a risk of "imminent harm" consistent with the definition provided in RCW **13.34.050**, which includes, but is not limited to, sexual abuse and sexual exploitation as defined in this chapter;

(B) Poses a serious threat of substantial harm to a child;

(C) Constitutes conduct involving a criminal offense that has, or is about to occur, in which the child is the victim;

(D) The child is an abandoned child as defined in RCW **13.34.030**;

(E) The child is an adjudicated dependent child as defined in RCW **13.34.030**, or the child is in a facility that is licensed, operated, or certified for care of children by the department under chapter **74.15** RCW, or by the department of early learning.

(c) The department may not be held civilly liable for the decision to respond to an allegation of child abuse or neglect by using the family assessment response under this section unless the state or its officers, agents, or employees acted with reckless disregard.

(12)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW **26.44.180** and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(13) For reports of alleged abuse or neglect that are responded to through family assessment response, the department shall:

(a) Provide the family with a written explanation of the procedure for assessment of the child and the family and its purposes;

(b) Collaborate with the family to identify family strengths, resources, and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;

(c) Complete the family assessment response within forty-five days of receiving the report; however, upon parental agreement, the family assessment response period may be extended up to ninety days;

(d) Offer services to the family in a manner that makes it clear that acceptance of the services is voluntary;

(e) Implement the family assessment response in a consistent and cooperative manner;

(f) Have the parent or guardian sign an agreement to participate in services before services are initiated that informs the parents of their rights under family assessment response, all of their options, and the options the department has if the parents do not sign the consent form.

(14)(a) In conducting an investigation or family assessment of alleged abuse or neglect, the department or law enforcement agency:

(i) May interview children. If the department determines that the response to the allegation will be family assessment response, the preferred practice is to request a parent's, guardian's, or custodian's permission to interview the child before conducting the child interview unless doing so would compromise the safety of the child or the integrity of the assessment. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. If the allegation is investigated, parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(ii) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(b) The Washington state school directors' association shall adopt a model policy addressing protocols when an interview, as authorized by this subsection, is conducted on school premises. In formulating its policy, the association shall consult with the department and the Washington association of sheriffs and police chiefs.

(15) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombuds of the contents of the report. The department shall also notify the ombuds of the disposition of the report.

(16) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(17)(a) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(b) In the family assessment response, the department shall not make a finding as to whether child abuse or neglect occurred. No one shall be named as a perpetrator and no investigative finding shall be entered in the department's child abuse or neglect database.

(18) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor.

(19) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(20) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030.

(21) The department shall make efforts as soon as practicable to determine the military status of parents whose children are subject to abuse or neglect allegations. If the department determines that a parent or guardian is in the military, the department shall notify a department of defense family advocacy program that there is an allegation of abuse and neglect that is screened in and open for investigation that relates to that military parent or guardian.

[2015 1st sp.s. c 6 § 1. Prior: **2013 c 273 § 2**; (2013 c 273 § 1 expired December 1, 2013); **2013 c 48 § 2**; (2013 c 48 § 1 expired December 1, 2013); **2013 c 23 § 43**; (2013 c 23 § 42 expired December 1, 2013); prior: **2012 c 259 § 3**; **2012 c 55 § 1**; **2009 c 480 § 1**; **2008 c 211 § 5**; (2008 c 211 § 4 expired October 1, 2008); prior: **2007 c 387 § 3**; **2007 c 220 § 2**; **2005 c 417 § 1**; **2003 c 207 § 4**; prior: **1999 c 267 § 20**; **1999 c 176 § 30**; **1998 c 328 § 5**; **1997 c 386 § 25**; **1996 c 278 § 2**; **1995 c 311 § 17**; prior: **1993 c 412 § 13**; **1993 c 237 § 1**; **1991 c 111 § 1**; **1989 c 22 § 1**; prior: **1988 c 142 § 2**; **1988 c 39 § 1**; prior: **1987 c 524 § 10**; **1987 c 512 § 23**; **1987 c 206 § 3**; **1986 c 145 § 1**; **1985 c 259 § 2**; **1984 c 97 § 3**; **1982 c 129 § 7**; **1981 c 164 § 2**; **1977 ex.s. c 80 § 26**; **1975 1st ex.s. c 217 § 3**; **1971 ex.s. c 167 § 1**; **1969 ex.s. c 35 § 3**; **1965 c 13 § 3**.]

NOTES:

Effective date—2013 c 273 § 2: "Section 2 of this act takes effect December 1, 2013." [**2013 c 273 § 4**.]

Expiration date—2013 c 273 § 1: "Section 1 of this act expires December 1, 2013." [**2013 c 273 § 3**.]

Effective date—2013 c 48 § 2: "Section 2 of this act takes effect December 1, 2013." [**2013 c 48 § 4**.]

Expiration date—2013 c 48 § 1: "Section 1 of this act expires December 1, 2013." [**2013 c 48 § 3**.]

Effective date—2013 c 23 § 43: "Section 43 of this act takes effect December 1, 2013." [**2013 c 23 § 639**.]

Expiration date—2013 c 23 § 42: "Section 42 of this act expires December 1, 2013." [2013 c 23 § 638.]

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Family assessment response evaluation—Family assessment response survey—2012 c 259: See notes following RCW 26.44.260.

Effective date—2008 c 211 § 5: "Section 5 of this act takes effect October 1, 2008." [2008 c 211 § 8.]

Expiration date—2008 c 211 § 4: "Section 4 of this act expires October 1, 2008." [2008 c 211 § 7.]

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Severability—2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Severability—1987 c 512: See RCW 18.19.901.

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and

punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

RCW 26.44.050

Abuse or neglect of child—Duty of law enforcement agency or department of social and health services—Taking child into custody without court order, when.

Except as provided in RCW 26.44.030(11), upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child.

[2012 c 259 § 5; 1999 c 176 § 33. Prior: 1987 c 450 § 7; 1987 c 206 § 5; 1984 c 97 § 5; 1981 c 164 § 3; 1977 ex.s. c 291 § 51; 1977 ex.s. c 80 § 28; 1975 1st ex.s. c 217 § 5; 1971 ex.s. c 302 § 15; 1969 ex.s. c 35 § 5; 1965 c 13 § 5.]

NOTES:

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Family assessment response evaluation—Family assessment response survey—2012 c 259: See notes following RCW 26.44.260.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Severability—1984 c 97: See RCW 74.34.900.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

Sec. 6. Section 5, chapter 17, Laws of 1984 as amended by section 2, chapter 201, Laws of 1985 and RCW 10.98.050 are each amended to read as follows:

(1) ~~((Except in the case of juveniles;))~~ It is the duty of the chief law enforcement officer or the local director of corrections to transmit within seventy-two hours from the time of arrest to the section fingerprints together with other identifying data as may be prescribed by the section, and statutory violations of any person lawfully arrested, fingerprinted, and photographed under RCW 43.43.735. The disposition report shall be transmitted to the prosecuting attorney.

(2) At the preliminary hearing or the arraignment of a felony case, the judge shall ensure that the felony defendants have been fingerprinted and an arrest and fingerprint form transmitted to the section. In cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the local director of corrections to initiate an arrest and fingerprint form and transmit it to the section. The disposition report shall be transmitted to the prosecuting attorney.

~~((3) The chief law enforcement officer of the jurisdiction shall initiate an arrest and fingerprint form for all juveniles who are fifteen years of age or older at the time the offense was committed and who are adjudicated of offenses that would be felonies if the juveniles were adults, and transmit the information within seventy-two hours to the section. The administrator of juvenile court services shall assist the chief law enforcement officer of the jurisdiction in developing procedures for obtaining the identification and disposition information required in this subsection, and the procedures shall be subject to the approval of the juvenile court judge. The juvenile information section of the administrator for the courts may assist the juvenile court with providing the section arrest and fingerprint forms, other identification, or other criminal history information.))~~

Sec. 7. Section 5, chapter 13, Laws of 1965 as last amended by section 5, chapter 97, Laws of 1984 and RCW 26.44.050 are each amended to read as follows:

Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it shall be the duty of the law enforcement agency or the department of social and health services to investigate and provide the protective services section with a report in accordance with the provision of chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. ~~((Notwithstanding the provisions of RCW 13.04.130 as now or hereafter amended;))~~ The law enforcement agency or the

department of social and health services investigating such a report is hereby authorized to photograph such a child or adult dependent person for the purpose of providing documentary evidence of the physical condition of the child or disabled person.

Sec. 8. Section 9, chapter 155, Laws of 1979 as last amended by section 33, chapter 257, Laws of 1986 and RCW 13.50.050 are each amended to read as follows:

(1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (11) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section and RCW 13.50.010.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) The juvenile court and the prosecutor may set up and maintain a central record-keeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central record-keeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(8) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the

conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Disciplinary board final decision" means any final decision issued by the disciplinary board or the director of the department of licensing for the following business or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) ****Drugless healing;**
- (e) Massage;
- (f) Midwifery;
- (g) Osteopathy;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing;
- (l) Psychology; and
- (m) Real estate brokers and salesmen.

(6) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; first or second degree rape of a child; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; or any of these crimes as they may be renamed in the future.

(7) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(8) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(9) "Vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical

inability to care for himself or herself or a patient in a state hospital as defined in chapter 72.23 RCW.

(10) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults. [1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

Reviser's note: (1) This section was amended by 1989 c 90 § 1 and by 1989 c 334 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**(2) Dependency actions are undertaken pursuant to RCW 13.34.040.*

*** (3) Drugless healing, chapter 18.36 RCW was repealed by 1987 c 447. The profession is now referred to as naturopathy and is regulated by chapter 18.36A RCW.*

Developmentally disabled persons: RCW 41.06.475.

State hospitals: RCW 72.23.035.

43.43.832 Background checks—Disclosure of child abuse or financial exploitation activity. (1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol criminal identification system may disclose, upon the request of a business or organization as defined in RCW 43.43.830, a prospective employee's record for convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation, but only if the victim was a vulnerable adult, adjudications of child abuse in a civil action, the issuance of a protection order against the respondent under chapter 74.34 RCW, and disciplinary board final decisions and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision. When necessary, applicants may be employed on a conditional basis pending completion of such a background investigation.

(2) The legislature also finds that the state board of education may request of the Washington state patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the department of social and health services, when considering persons for state positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults or when licensing or authorizing such persons or agencies pursuant to its authority under chapter 74.15, 18.51, 18.20, or 72.23

RCW, or any later-enacted statute which purpose is to license or regulate a facility which handles vulnerable adults, must consider the information listed in subsection (1) of this section. However, when necessary, persons may be employed on a conditional basis pending completion of the background investigation. The state personnel board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees. [1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

Reviser's note: This section was amended by 1989 c 90 § 2 and by 1989 c 334 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

43.43.834 Background checks by business, organization, or insurance company—Limitations—Civil liability. (1) A business or organization shall not make an inquiry to the Washington state patrol under RCW 43.43.832 or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant has been:

(a) Convicted of any crime against children or other persons;

(b) Convicted of crimes relating to financial exploitation if the victim was a vulnerable adult;

(c) Found in any dependency action under *RCW 13.34.030(2)(b) to have sexually assaulted or exploited any minor or to have physically abused any minor;

(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;

(e) Found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person or to have abused or financially exploited any vulnerable adult; or

(f) Found by a court in a protection proceeding under chapter 74.34 RCW, to have abused or financially exploited a vulnerable adult.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons and all crimes relating to financial exploitation as defined in RCW 43.43.830 in which the victim was a vulnerable adult.

(3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW 43.43.838.

(4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is

prohibited. A business or organization violating this subsection is subject to a civil action for damages.

(6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.

(7) The business and organization shall be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence. [1989 c 334 § 3; 1989 c 90 § 3; 1987 c 486 § 3.]

Reviser's note: (1) This section was amended by 1989 c 90 § 3 and by 1989 c 334 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

* (2) Dependency actions are undertaken pursuant to RCW 13.34.040.

43.43.836 Disclosure to individual of own record—Fee. An individual may contact the state patrol to ascertain whether that same individual has a civil adjudication, disciplinary board final decision, or conviction record. The state patrol shall disclose such information, subject to the fee established under RCW 43.43.838. [1987 c 486 § 4.]

43.43.838 Background checks—Transcript of conviction record, disciplinary board decision, criminal charges, or civil adjudication—Finding of no evidence, identification document—Immunity—Rules. (1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or civil adjudication record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

(a) The subject of the inquiry;

(b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;

(c) The department of social and health services;

(d) Any law enforcement agency, prosecuting authority, or the office of the attorney general; or

(e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to regulate or license a facility which handles vulnerable adults. However, access to conviction records pursuant to this subsection (1)(e) does not limit or restrict the ability of the department to obtain additional information regarding conviction records and pending charges as set forth in RCW 74.15.030(2)(b).

After processing the request, if the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or adjudication record shows no evidence of a crime against children or other persons or, in the case of vulnerable adults, no evidence of crimes relating to financial exploitation in which the victim was a vulnerable adult, an

(12) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults. [1998 c 10 § 1; 1996 c 178 § 12; 1995 c 250 § 1; 1994 c 108 § 1; 1992 c 145 § 16. Prior: 1990 c 146 § 8; 1990 c 3 § 1101; prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

At-risk children volunteer program. RCW 43.150.080.

Developmentally disabled persons: RCW 41.06.475.

State hospitals: RCW 72.23.035.

43.43.832 Background checks—Disclosure of child abuse or financial exploitation activity—Sharing of criminal background information by health care facilities.

(1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. The legislature further finds that many developmentally disabled individuals and vulnerable adults desire to hire their own employees directly and also need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol criminal identification system shall disclose, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian, an applicant's record for convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation, but only if the victim was a vulnerable adult, adjudications of child abuse in a civil action, the issuance of a protection order against the respondent under chapter 74.34 RCW, and disciplinary board final decisions and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision.

(2) The legislature also finds that the state board of education may request of the Washington state patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the department of social and health services must consider the information listed in subsection (1) of this section in the following circumstances:

(a) When considering persons for state positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults;

(b) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or

vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(c) When contracting with individuals or businesses or organizations for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

(6)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(g) For the purposes of this subsection, "health care facility" means a nursing home licensed under chapter 18.51

RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW. [1997 c 392 § 524; 1995 c 250 § 2; 1993 c 281 § 51; 1990 c 3 § 1102. Prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Effective date—1993 c 281: See note following RCW 41.06.022.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

43.43.833 Background checks—State immunity. If information is released under this chapter by the state of Washington, the state and its employees: (1) Make no representation that the subject of the inquiry has no criminal record or adverse civil or administrative decisions; (2) make no determination that the subject of the inquiry is suitable for involvement with a business or organization; and (3) are not liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information. [1997 c 392 § 529.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

43.43.834 Background checks by business, organization, or insurance company—Limitations—Civil liability. (1) A business or organization shall not make an inquiry to the Washington state patrol under RCW 43.43.832 or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer, that an inquiry may be made.

(2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant has been:

(a) Convicted of any crime against children or other persons;

(b) Convicted of crimes relating to financial exploitation if the victim was a vulnerable adult;

(c) Convicted of crimes related to drugs as defined in RCW 43.43.830;

(d) Found in any dependency action under RCW 13.34.040 to have sexually assaulted or exploited any minor or to have physically abused any minor;

(e) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;

(f) Found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person or to have abused or financially exploited any vulnerable adult; or

(g) Found by a court in a protection proceeding under chapter 74.34 RCW, to have abused or financially exploited a vulnerable adult.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons and all crimes relating to financial exploitation as defined in RCW 43.43.830 in which the victim was a vulnerable adult.

(3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW 43.43.838.

(4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this subsection is subject to a civil action for damages.

(6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.

(7) The business and organization shall be immune from civil liability for failure to request background information on an applicant unless the failure to do so constitutes gross negligence. [1998 c 10 § 3; 1990 c 3 § 1103. Prior: 1989 c 334 § 3; 1989 c 90 § 3; 1987 c 486 § 3.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

43.43.835 Background checks—Drug-related conviction information. For purposes of background checks, convictions for crimes relating to drugs may be used as a tool for investigation and may be used for any decision regarding the person's suitability for a position in which the person may have unsupervised access to children or vulnerable adults. [1998 c 10 § 2.]

43.43.836 Disclosure to individual of own record—Fee. An individual may contact the state patrol to ascertain whether that same individual has a civil adjudication, disciplinary board final decision, or conviction record. The state patrol shall disclose such information, subject to the fee established under RCW 43.43.838. [1987 c 486 § 4.]

43.43.838 Record checks—Transcript of conviction record, disciplinary board decision, criminal charges, or civil adjudication—Finding of no evidence, identification document—Immunity—Rules. (1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or civil adjudication record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

(a) The subject of the inquiry;

(b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;

(c) The department of social and health services;

(d) Any law enforcement agency, prosecuting authority, or the office of the attorney general; or

(e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute

"Disciplinary board final decision," for real estate brokers and salespersons, means any final decision issued by the director of the department of licensing for real estate brokers and salespersons.

(9) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(10) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(11) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(12) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults.

[1999 c 45 § 5; 1998 c 10 § 1; 1996 c 178 § 12; 1995 c 250 § 1; 1994 c 108 § 1; 1992 c 145 § 16. Prior: 1990 c 146 § 8; 1990 c 3 § 1101; prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

Notes:

Effective date--1996 c 178: See note following RCW 18.35.110.

Index, part headings not law--Severability--Effective dates--Application--1990 c 3: See RCW 18.155.900 through 18.155.902.

At-risk children volunteer program: RCW 43.150.080.

Developmentally disabled persons: RCW 41.06.475.

State hospitals: RCW 72.23.035.

RCW 43.43.832 Background checks--Disclosure of information--Sharing of criminal background information by health care facilities.

(1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. The legislature further finds that many developmentally disabled individuals and vulnerable adults desire to hire their own employees directly and also need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol criminal identification system shall disclose, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian, an applicant's record for convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation, but only if the victim was a vulnerable adult, adjudications of child abuse in a civil action, the issuance of a protection order against the respondent under chapter 74.34 RCW, and disciplinary board final decisions and any subsequent

criminal charges associated with the conduct that is the subject of the disciplinary board final decision.

(2) The legislature also finds that the state board of education may request of the Washington state patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the department of social and health services must consider the information listed in subsection (1) of this section in the following circumstances:

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

(6)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request

from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(g) For the purposes of this subsection, "health care facility" means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(7) If a federal bureau of investigation check is required in addition to the state background check by the department of social and health services, an applicant who is not disqualified based on the results of the state background check shall be eligible for a one hundred twenty day provisional approval to hire, pending the outcome of the federal bureau of investigation check. The department may extend the provisional approval until receipt of the federal bureau of investigation check. If the federal bureau of investigation check disqualifies an applicant, the department shall notify the requestor that the provisional approval to hire is withdrawn and the applicant may be terminated.

[2000 c 87 § 1; 1997 c 392 § 524; 1995 c 250 § 2; 1993 c 281 § 51; 1990 c 3 § 1102. Prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

Notes:

Short title--Findings--Construction--Conflict with federal requirements--Part headings and captions not law--1997 c 392: See notes following RCW 74.39A.009.

Effective date--1993 c 281: See note following RCW 41.06.022.

Index, part headings not law--Severability--Effective dates--Application--1990 c 3: See RCW 18.155.900 through 18.155.902.

(a) Include the family unit as the primary focus of service; identifying family member strengths; empowering families; child, adult, and family development; stress management; and may include parent training and family therapy techniques;

(b) Address intake and referral, assessment of risk, case assessment, matching clients to services, and service planning issues in the context of the home-delivered service model, including strategies for engaging family members, defusing violent situations, and communication and conflict resolution skills;

(c) Cover methods of helping families acquire the skills they need, including home management skills, life skills, parenting, child development, and the use of community resources;

(d) Address crisis intervention and other strategies for the management of depression, and suicidal, assaultive, and other high-risk behavior; and

(e) Address skills in collaborating with other disciplines and services in promoting the safety of children and other family members and promoting the preservation of the family.

(2) The department and the office of the administrator for the courts shall, within available funds, collaborate in providing training to judges, and others involved in the provision of services pursuant to this title, including service providers, on the function and use of preservation services. [1995 c 311 § 12.]

74.14C.900 Severability—1992 c 214. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 214 § 13.]

Chapter 74.14D RCW

ALTERNATIVE FAMILY-CENTERED SERVICES

Sections

- 74.14D.010 Alternative response system—Defined.
- 74.14D.020 Delivery of services—Contracts—Two or three model systems to be used.
- 74.14D.030 Data collection, evaluation.
- 74.14D.040 Court may order delivery of services.
- 74.14D.900 Expiration of chapter.

74.14D.010 Alternative response system—Defined. (Expires July 1, 2005.) As used in this chapter, "alternative response system" means voluntary family-centered services that are: (1) Provided by an entity with which the department contracts; and (2) intended to increase the strengths and cohesiveness of families that the department determines present a low risk of child abuse or neglect. [1997 c 386 § 9.]

Application—1997 c 386: "Sections 8 through 14 and 17 through 34 of this act apply only to incidents occurring on or after January 1, 1998." [1997 c 386 § 67.]

Effective date—1997 c 386: "Sections 8 through 13 and 21 through 34 of this act take effect January 1, 1998." [1997 c 386 § 68.]

74.14D.020 Delivery of services—Contracts—Two or three model systems to be used. (Expires July 1, 2005.) (1) The department shall contract for delivery of services for

at least two but not more than three models of alternative response systems. The services shall be reasonably available throughout the state but need not be sited in every county in the state, subject to such conditions and limitations as may be specified in the omnibus appropriations act.

(2) The systems shall provide delivery of services in the least intrusive manner reasonably likely to achieve improved family cohesiveness, prevention of rereferrals of the family for alleged abuse or neglect, and improvement in the health and safety of children.

(3) The department shall identify and prioritize risk and protective factors associated with the type of abuse or neglect referrals that are appropriate for services delivered by alternative response systems. Contractors who provide services through an alternative response system shall use the factors in determining which services to deliver, consistent with the provisions of subsection (2) of this section.

(4) Consistent with the provisions of chapter 26.44 RCW, the providers of services under the alternative response system shall recognize the due process rights of families that receive such services and recognize that these services are not intended to be investigative for purposes of chapter 13.34 RCW. [1997 c 386 § 10.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

74.14D.030 Data collection, evaluation. (Expires July 1, 2005.) The department shall identify appropriate data to determine and evaluate outcomes of the services delivered by the alternative response systems. All contracts for delivery of alternative response system services shall include provisions and funding for data collection. [1997 c 386 § 11.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

74.14D.040 Court may order delivery of services. (Expires July 1, 2005.) (1) The court may, upon the entry of an order under this chapter, order the delivery of services through any appropriate public or private provider.

(2) This section may not be construed as allowing the court to require the department to pay for the cost of any services provided under this section. [1997 c 386 § 12.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

74.14D.900 Expiration of chapter. (Expires July 1, 2005.) This chapter expires July 1, 2005. [1997 c 386 § 13.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Chapter 74.15 RCW

CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

Sections

- 74.15.010 Declaration of purpose.
- 74.15.020 Definitions.
- 74.15.030 Powers and duties of secretary.
- 74.15.040 Licenses for foster-family homes required—Inspections.
- 74.15.050 Fire protection—Powers and duties of chief of the Washington state patrol.
- 74.15.060 Health protection—Powers and duties of secretary of health.
- 74.15.063 Notice of pesticide use.

- 74.15.070 Articles of incorporation and amendments—Copies to be furnished to department.
- 74.15.080 Access to agencies, records.
- 74.15.090 Licenses required for agencies.
- 74.15.100 License application, issuance, duration—Reclassification.
- 74.15.110 Renewal of licenses.
- 74.15.120 Initial licenses.
- 74.15.125 Probationary licenses.
- 74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties.
- 74.15.132 Adjudicative proceedings—Training for administrative law judges.
- 74.15.134 License or certificate suspension—Noncompliance with support order—Reissuance.
- 74.15.140 Action against licensed or unlicensed agencies authorized.
- 74.15.150 Penalty for operating without license.
- 74.15.160 Continuation of existing licensing rules.
- 74.15.170 Agencies, homes conducted by religious organizations—Application of chapter.
- 74.15.180 Designating home or facility as semi-secure facility.
- 74.15.190 Authority of Indian tribes to license agencies within reservations—Placement of children.
- 74.15.200 Child abuse and neglect prevention training to parents and day care providers.
- 74.15.210 Community facility—Service provider must report juvenile infractions or violations—Violations by service provider—Secretary's duties—Rules.
- 74.15.220 HOPE centers—Establishment—Requirements.
- 74.15.230 Responsible living skills programs—Established—Requirements.
- 74.15.240 Responsible living skills program—Eligibility.
- 74.15.250 HOPE centers—Responsible living skills programs—Licensing authority—Rules.
- 74.15.260 HOPE centers—Responsible living skills programs—Grant proposals—Technical assistance.
- 74.15.270 HOPE centers—Responsible living skills programs—Awarding of contracts.
- 74.15.280 Emergency respite centers—Licensing—Rules.
- 74.15.900 Short title—Purpose—Entitlement not granted—1999 c 267 §§ 10-26.
- 74.15.901 Federal waivers—1999 c 267 §§ 10-26.

Adoption: Chapter 26.33 RCW.

Age of majority: Chapter 26.28 RCW.

Birth centers: Chapter 18.46 RCW.

Child abuse: Chapter 26.44 RCW.

Immunization program, applicability to day care centers: RCW 28A.210.060 through 28A.210.170.

Liability insurance for foster parents: RCW 74.14B.080.

Liability of foster parents: RCW 4.24.590.

Out-of-home placement—Court action upon filing of child in need of services petition—Child placement: RCW 13.32A.160.

Uniform Parentage Act: Chapter 26.26 RCW.

74.15.010 Declaration of purpose. The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

(1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups;

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(2004 Ed.)

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons. [1995 c 302 § 2; 1983 c 3 § 192; 1977 ex.s. c 80 § 70; 1967 c 172 § 1.]

Intent—1995 c 302: "The legislature declares that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of children, including those who receive care away from their own homes. The legislature further declares that no person or agency has a right to be licensed under this chapter to provide care for children. The health, safety, and well-being of children must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, and whether to take other licensing action. The legislature intends, through the provisions of this act, to provide the department of social and health services with additional enforcement authority to carry out the purpose and provisions of this act. Furthermore, administrative law judges should receive specialized training so that they have the specialized expertise required to appropriately review licensing decisions of the department.

Children placed in foster care are particularly vulnerable and have a special need for placement in an environment that is stable, safe, and nurturing. For this reason, foster homes should be held to a high standard of care, and department decisions regarding denial, suspension, or revocation of foster care licenses should be upheld on review if there are reasonable grounds for such action." [1995 c 302 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1967 c 172: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 172 § 24.]

74.15.020 Definitions. For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Child day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(d) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(e) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(f) "Family day-care provider" means a child day-care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

(g) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(h) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(i) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(j) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(k) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(l) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of

preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where: (i) The person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care; or (ii) the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(f) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States immigration and naturalization service, or persons who have the care of such an international child in their home;

(g) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(h) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(i) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(j) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(k) Licensed physicians or lawyers;

(l) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(m) Facilities approved and certified under chapter 71A.22 RCW;

(n) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(o) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(p) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(q) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(r) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(3) "Department" means the state department of social and health services.

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(6) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(7) "Secretary" means the secretary of social and health services.

(8) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(9) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the job training partnership act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3;

1997 c 245 § 7. Prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Reviser's note: This section was amended by 2001 c 137 § 3, 2001 c 144 § 1, and by 2001 c 230 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Alphabetization—1998 c 269: See note following RCW 13.50.010.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Intent—1995 c 302: See note following RCW 74.15.010.

Severability—Effective date—1991 c 128: See RCW 19.166.900 and 19.166.901.

Severability—1988 c 176: See RCW 71A.10.900.

Severability—1987 c 170: See note following RCW 13.04.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.030 Powers and duties of secretary. The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or developmentally disabled persons. In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for chil-

dren shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee except that in the case of a foster family home, if this expense would work a hardship on the licensee, the department shall pay the expense. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The secretary shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, and developmentally disabled persons. Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with the child care coordinating committee and other affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons. [2000 c 162 § 20; 2000 c 122 § 40; 1997 c 386 § 33; 1995 c 302 § 4; 1988 c 189 § 3. Prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

Reviser's note: This section was amended by 2000 c 122 § 40 and by 2000 c 162 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Intent—1995 c 302: See note following RCW 74.15.010.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.040 Licenses for foster-family homes required—Inspections. An agency seeking to accept and serve children, developmentally disabled persons, or expectant mothers as a foster-family home shall make application for license in such form and substance as required by the department. The department shall maintain a list of applicants through which placement may be undertaken. However, agencies and the department shall not place a child, developmentally disabled person, or expectant mother in a home until the home is licensed. Foster-family homes shall be inspected prior to licensure, except that inspection by the department is not required if the foster-family home is under the supervision of a licensed agency upon certification to the department by the licensed agency that such homes meet the requirements for foster homes as adopted pursuant to chapter 74.15 RCW and RCW 74.13.031. [1982 c 118 § 7; 1979 c 141 § 356; 1967 c 172 § 4.]

74.15.050 Fire protection—Powers and duties of chief of the Washington state patrol. The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, except foster-family homes and child-placing agencies, necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies, other than foster-family homes or child-placing agencies, as he or she deems necessary;

(3) To make a periodic review of requirements under RCW 74.15.030(7) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses hereunder, other than foster-family homes or child-placing agencies, who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a *provisional license may be issued as provided in RCW 74.15.120. [1995 c 369 § 62; 1986 c 266 § 123; 1982 c 118 § 8; 1979 c 141 § 357; 1967 c 172 § 5.]

***Reviser's note:** "Provisional license" redesignated "initial license" by 1995 c 311 § 22.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

74.15.060 Health protection—Powers and duties of secretary of health. The secretary of health shall have the power and it shall be his or her duty:

In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to develop minimum requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, necessary to promote the health of all persons residing therein.

The secretary of health or the city, county, or district health department designated by the secretary shall have the power and the duty:

(1) To make or cause to be made such inspections and investigations of agencies as may be deemed necessary; and

(2) To issue to applicants for licenses hereunder who comply with the requirements adopted hereunder, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a *provisional license may be issued as provided in RCW 74.15.120. [1991 c 3 § 376; 1989 1st ex.s. c 9 § 265; 1987 c 524 § 14; 1982 c 118 § 9; 1970 ex.s. c 18 § 14; 1967 c 172 § 6.]

***Reviser's note:** "Provisional license" redesignated "initial license" by 1995 c 311 § 22.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

74.15.063 Notice of pesticide use. Licensed day care centers shall provide notice of pesticide use to parents or guardians of students and employees pursuant to chapter 17.21 RCW. [2001 c 333 § 5.]

Effective date—2001 c 333: See note following RCW 17.21.020.

74.15.070 Articles of incorporation and amendments—Copies to be furnished to department. A copy of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department of social and health services at the time such articles or amendments are filed. [1979 c 141 § 358; 1967 c 172 § 7.]

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74.15.080 Access to agencies, records. All agencies subject to chapter 74.15 RCW and RCW 74.13.031 shall accord the department of social and health services, the secretary of health, the chief of the Washington state patrol, and the director of fire protection, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted thereunder. [1995 c 369 § 63; 1989 1st ex.s. c 9 § 266; 1986 c 266 § 124; 1979 c 141 § 359; 1967 c 172 § 8.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1986 c 266: See note following RCW 38.52.005.

74.15.090 Licenses required for agencies. Except as provided in RCW 74.15.190, it shall hereafter be unlawful for any agency to receive children, expectant mothers or developmentally disabled persons for supervision or care, or arrange for the placement of such persons, unless such agency is licensed as provided in chapter 74.15 RCW. [1987 c 170 § 14; 1982 c 118 § 10; 1977 ex.s. c 80 § 73; 1967 c 172 § 9.]

Severability—1987 c 170: See note following RCW 13.04.030.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.100 License application, issuance, duration—Reclassification. Each agency shall make application for a license or renewal of license to the department of social and health services on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Such a foster home license shall cease to be valid when the home is no longer under the supervision of that agency. Upon receipt of such application, the department shall either grant or deny a license within ninety days unless the application is for licensure as a foster-family home, in which case RCW 74.15.040 shall govern. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that an initial license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of three years. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed foster-family and family day-care homes having an acceptable history of child care, the license may remain in effect for two weeks after a move, except that for the foster-family home this will apply only if the family remains intact. [1995 c 302 § 8; 1982 c 118 § 11; 1979 c 141 § 360; 1967 c 172 § 10.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.110 Renewal of licenses. If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days prior to the expiration date of the license except that a request for renewal of a foster family home license shall be filed prior to the expiration of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department shall act. [1991 c 14 § 1; 1967 c 172 § 11.]

74.15.120 Initial licenses. The secretary of social and health services may, at his or her discretion, issue an initial license instead of a full license, to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license. An initial license shall not be granted to any foster-family home except as specified in this section. An initial license may be granted to a foster-family home only if the following three conditions are met: (1) The license is limited so that the licensee is authorized to provide care only to a specific child or specific children; (2) the department has determined that the licensee has a relationship with the child, and the child is comfortable with the licensee, or that it would otherwise be in the child's best interest to remain or be placed in the licensee's home; and (3) the initial license is issued for a period not to exceed ninety days. [1995 c 311 § 22; 1979 c 141 § 361; 1967 c 172 § 12.]

74.15.125 Probationary licenses. (1) The department may issue a probationary license to a licensee who has had a license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(3) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(4) An existing license is invalidated when a probationary license is issued.

(5) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(6) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license. [1995 c 302 § 7.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties. (1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care, however, no unfounded report of child abuse or neglect may be used to deny employment or a license;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed seventy-five dollars per violation for a family day-care home and two hundred fifty dollars per violation for group homes, child day-care centers, and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has

assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties. [1998 c 314 § 6; 1995 c 302 § 5; 1989 c 175 § 149; 1982 c 118 § 12; 1979 c 141 § 362; 1967 c 172 § 13.]

Intent—1995 c 302: See note following RCW 74.15.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

74.15.132 Adjudicative proceedings—Training for administrative law judges. (1) The office of administrative hearings shall not assign nor allow an administrative law judge to preside over an adjudicative hearing regarding denial, modification, suspension, or revocation of any license to provide child care, including foster care, under this chapter, unless such judge has received training related to state and federal laws and department policies and procedures regarding:

- (a) Child abuse, neglect, and maltreatment;
- (b) Child protective services investigations and standards;
- (c) Licensing activities and standards;
- (d) Child development; and
- (e) Parenting skills.

(2) The office of administrative hearings shall develop and implement a training program that carries out the requirements of this section. The office of administrative hearings shall consult and coordinate with the department in developing the training program. The department may assist the office of administrative hearings in developing and providing training to administrative law judges. [1995 c 302 § 6.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.134 License or certificate suspension—Non-compliance with support order—Reissuance. The secretary shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the secretary's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 858.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

74.15.140 Action against licensed or unlicensed agencies authorized. Notwithstanding the existence or pursuit of

any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he may deem advisable against any agency subject to licensing under the provisions of chapter 74.15 RCW and RCW 74.13.031 or against any such agency not having a license as heretofore provided in chapter 74.15 RCW and RCW 74.13.031. [1979 c 141 § 363; 1967 c 172 § 14.]

74.15.150 Penalty for operating without license. Any agency operating without a license shall be guilty of a misdemeanor. This section shall not be enforceable against an agency until sixty days after the effective date of new rules, applicable to such agency, have been adopted under chapter 74.15 RCW and RCW 74.13.031. [1982 c 118 § 13; 1967 c 172 § 15.]

74.15.160 Continuation of existing licensing rules. Existing rules for licensing adopted pursuant to *chapter 74.14 RCW, sections 74.14.010 through 74.14.150, chapter 26, Laws of 1959, shall remain in force and effect until new rules are adopted under chapter 74.15 RCW and RCW 74.13.031, but not thereafter. [1982 c 118 § 14; 1967 c 172 § 16.]

***Reviser's note:** Chapter 74.14 RCW was repealed by 1967 c 172 § 23.

74.15.170 Agencies, homes conducted by religious organizations—Application of chapter. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents of any agency, children's institution, child placing agency, maternity home, day or hourly nursery, foster home or other related institution conducted for or by members of a recognized religious sect, denomination or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such a home or institution. [1967 c 172 § 21.]

74.15.180 Designating home or facility as semi-secure facility. The department, pursuant to rules, may enable any licensed foster family home or group care facility to be designated as a semi-secure facility, as defined by RCW 13.32A.030. [1979 c 155 § 84.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.15.190 Authority of Indian tribes to license agencies within reservations—Placement of children. The state of Washington recognizes the authority of Indian tribes within the state to license agencies, located within the boundaries of a federally recognized Indian reservation, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption. The department and state licensed child-placing agencies may place children in tribally licensed facilities if the requirements of RCW 74.15.030 (2)(b) and (3) and supporting rules

are satisfied before placing the children in such facilities by the department or any state licensed child-placing agency. [1987 c 170 § 13.]

Severability—1987 c 170: See note following RCW 13.04.030.

74.15.200 Child abuse and neglect prevention training to parents and day care providers. The department of social and health services shall have primary responsibility for providing child abuse and neglect prevention training to parents and licensed child day care providers of preschool age children participating in day care programs meeting the requirements of chapter 74.15 RCW. The department may limit training under this section to trainers' workshops and curriculum development using existing resources. [1987 c 489 § 5.]

Intent—1987 c 489: See note following RCW 28A.300.150.

74.15.210 Community facility—Service provider must report juvenile infractions or violations—Violations by service provider—Secretary's duties—Rules. (1) Whenever the secretary contracts with a service provider to operate a community facility, the contract shall include a requirement that each service provider must report to the department any known infraction or violation of conditions committed by any juvenile under its supervision. The report must be made immediately upon learning of serious infractions or violations and within twenty-four hours for other infractions or violations.

(2) The secretary shall adopt rules to implement and enforce the provisions of this section. The rules shall contain a schedule of monetary penalties not to exceed the total compensation set forth in the contract, and include provisions that allow the secretary to terminate all contracts with a service provider that has violations of this section and the rules adopted under this section.

(3) The secretary shall document in writing all violations of this section and the rules adopted under this section, penalties, actions by the department to remove juveniles from a community facility, and contract terminations. The department shall give great weight to a service provider's record of violations, penalties, actions by the department to remove juveniles from a community facility, and contract terminations in determining to execute, renew, or renegotiate a contract with a service provider. [1998 c 269 § 7.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

74.15.220 HOPE centers—Establishment—Requirements. The secretary shall establish HOPE centers that provide no more than seventy-five beds across the state and may establish HOPE centers by contract, within funds appropriated by the legislature specifically for this purpose. HOPE centers shall be operated in a manner to reasonably assure that street youth placed there will not run away. Street youth may leave a HOPE center during the course of the day to attend school or other necessary appointments, but the street youth must be accompanied by an administrator or an administrator's designee. The street youth must provide the administration with specific information regarding his or her destination and expected time of return to the HOPE center. Any

street youth who runs away from a HOPE center shall not be readmitted unless specifically authorized by the street youth's placement and liaison specialist, and the placement and liaison specialist shall document with specific factual findings an appropriate basis for readmitting any street youth to a HOPE center. HOPE centers are required to have the following:

(1) A license issued by the secretary;

(2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. This professional staff person may be contractual or a part-time employee, but must be available to work with street youth in a HOPE center at a ratio of one to every fifteen youth staying in a HOPE center. This professional shall be known as a placement and liaison specialist. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency. The placement and liaison specialist shall:

(a) Conduct an assessment of the street youth that includes a determination of the street youth's legal status regarding residential placement;

(b) Facilitate the street youth's return to his or her legally authorized residence at the earliest possible date or initiate processes to arrange legally authorized appropriate placement. Any street youth who may meet the definition of dependent child under RCW 13.34.030 must be referred to the department. The department shall determine whether a dependency petition should be filed under chapter 13.34 RCW. A shelter care hearing must be held within seventy-two hours to authorize out-of-home placement for any youth the department determines is appropriate for out-of-home placement under chapter 13.34 RCW. All of the provisions of chapter 13.32A RCW must be followed for children in need of services or at-risk youth;

(c) Interface with other relevant resources and system representatives to secure long-term residential placement and other needed services for the street youth;

(d) Be assigned immediately to each youth and meet with the youth within eight hours of the youth receiving HOPE center services;

(e) Facilitate a physical examination of any street youth who has not seen a physician within one year prior to residence at a HOPE center and facilitate evaluation by a county-designated mental health professional, a chemical dependency specialist, or both if appropriate; and

(f) Arrange an educational assessment to measure the street youth's competency level in reading, writing, and basic mathematics, and that will measure learning disabilities or special needs;

(3) Staff trained in development needs of street youth as determined by the secretary, including an administrator who is a professional with a master's degree in counseling, social work, or a related field and at least one year of experience working with street youth, or a bachelor of arts degree in social work or a related field and five years of experience working with street youth, who must work with the placement and liaison specialist to provide appropriate services on site;

(4) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary;

(5) Notification requirements that meet the notification requirements of chapter 13.32A RCW. The youth's arrival date and time must be logged at intake by HOPE center staff. The staff must immediately notify law enforcement and dependency caseworkers if a street youth runs away from a HOPE center. A child may be transferred to a secure facility as defined in RCW 13.32A.030 whenever the staff reasonably believes that a street youth is likely to leave the HOPE center and not return after full consideration of the factors set forth in RCW 13.32A.130(2)(a) (i) and (ii). The street youth's temporary placement in the HOPE center must be authorized by the court or the secretary if the youth is a dependent of the state under chapter 13.34 RCW or the department is responsible for the youth under chapter 13.32A RCW, or by the youth's parent or legal custodian, until such time as the parent can retrieve the youth who is returning to home;

(6) HOPE centers must identify to the department any street youth it serves who is not returning promptly to home. The department then must contact the missing children's clearinghouse identified in chapter 13.60 RCW and either report the youth's location or report that the youth is the subject of a dependency action and the parent should receive notice from the department;

(7) Services that provide counseling and education to the street youth; and

(8) The department shall only award contracts for the operation of HOPE center beds and responsible living skills programs in departmental regions: (a) With operating secure crisis residential centers; or (b) in which the secretary finds significant progress is made toward opening a secure crisis residential center. [1999 c 267 § 12.]

Phase in of beds—1999 c 267 §§ 12 and 13: "Within funds specifically appropriated by the legislature, HOPE center beds referenced in section 12 of this act and responsible living skills program beds referenced in section 13 of this act shall be phased in at the rate of twenty-five percent each year beginning January 1, 2000, until the maximum is attained." [1999 c 267 § 26.]

Effective date—1999 c 267 §§ 12 and 13: "Sections 12 and 13 of this act take effect January 1, 2000." [1999 c 267 § 27.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.230 Responsible living skills programs—Established—Requirements. The secretary shall establish responsible living skills programs that provide no more than seventy-five beds across the state and may establish responsible living skills programs by contract, within funds appropriated by the legislature specifically for this purpose. Responsible living skills programs shall have the following:

(1) A license issued by the secretary;

(2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth available to serve residents or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. The professional shall provide counseling services and interface with other relevant resources and systems to prepare the minor for

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adult living. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency;

(3) Staff trained in development needs of older adolescents eligible to participate in responsible living skills programs as determined by the secretary;

(4) Transitional living services and a therapeutic model of service delivery that provides necessary program supervision of residents and at the same time includes a philosophy, program structure, and treatment planning that emphasizes achievement of competency in independent living skills. Independent living skills include achieving basic educational requirements such as a GED, enrollment in vocational and technical training programs offered at the community and vocational colleges, obtaining and maintaining employment; accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each resident shall have a plan for achieving independent living skills by the time the resident leaves the placement. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A resident who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be placed outside the program; and

(5) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary.

(6) The department shall not award contracts for the operation of responsible living skills programs until HOPE center beds are operational. [1999 c 267 § 13.]

Phase in of beds—Effective date—1999 c 267 §§ 12 and 13: See notes following RCW 74.15.220.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.240 Responsible living skills program—Eligibility. To be eligible for placement in a responsible living skills program, the minor must be dependent under chapter 13.34 RCW and must have lived in a HOPE center or in a secure crisis residential center. Responsible living skills centers are intended as a placement alternative for dependent youth that the department chooses for the youth because no other services or alternative placements have been successful. Responsible living skills centers are not for dependent youth whose permanency plan includes return to home or family reunification. [1999 c 267 § 14.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.250 HOPE centers—Responsible living skills programs—Licensing authority—Rules. The secretary is authorized to license HOPE centers and responsible living skills programs that meet statutory and rule requirements created by the secretary. The secretary is authorized to develop rules necessary to carry out the provisions of sections 10

through 26, chapter 267, Laws of 1999. The secretary may rely upon existing licensing provisions in development of licensing requirements for HOPE centers and responsible living skills programs, as are appropriate to carry out the intent of sections 10 through 26, chapter 267, Laws of 1999. HOPE centers and responsible living skills programs shall be required to adhere to departmental regulations prohibiting the use of alcohol, tobacco, controlled substances, violence, and sexual activity between residents. [1999 c 267 § 15.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.260 HOPE centers—Responsible living skills programs—Grant proposals—Technical assistance. The department shall provide technical assistance in preparation of grant proposals for HOPE centers and responsible living skills programs to nonprofit organizations unfamiliar with and inexperienced in submission of requests for proposals to the department. [1999 c 267 § 21.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.270 HOPE centers—Responsible living skills programs—Awarding of contracts. The department shall consider prioritizing, on an ongoing basis, the awarding of contracts for HOPE centers and responsible living skills programs to providers who have not traditionally been awarded contracts with the department. [1999 c 267 § 22.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.280 Emergency respite centers—Licensing—Rules. The secretary is authorized to license emergency respite centers. The department may adopt rules to specify licensing requirements for emergency respite centers. [2001 c 230 § 2.]

74.15.900 Short title—Purpose—Entitlement not granted—1999 c 267 §§ 10-26. Sections 10 through 26, chapter 267, Laws of 1999 may be referred to as the homeless youth prevention, protection, and education act, or the HOPE act. Every day many youth in this state seek shelter out on the street. A nurturing nuclear family does not exist for them, and state-sponsored alternatives such as foster homes do not meet the demand and isolate youth, who feel like outsiders in families not their own. The legislature recognizes the need to develop placement alternatives for dependent youth ages sixteen to eighteen, who are living on the street. The HOPE act is an effort to engage youth and provide them access to services through development of life skills in a setting that supports them. Nothing in sections 10 through 26, chapter 267, Laws of 1999 shall constitute an entitlement. [1999 c 267 § 10.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.901 Federal waivers—1999 c 267 §§ 10-26. The department of social and health services shall seek any necessary federal waivers for federal funding of the programs created under sections 10 through 26, chapter 267, Laws of 1999. The department shall pursue federal funding sources

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for the programs created under sections 10 through 26, chapter 267, Laws of 1999, and report to the legislature any statutory barriers to federal funding. [1999 c 267 § 23.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Chapter 74.18 RCW

DEPARTMENT OF SERVICES FOR THE BLIND

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74.18.010 Intent. The purposes of this chapter are to promote employment and independence of blind persons in the state of Washington through their complete integration into society on the basis of equality, and to encourage public acceptance of the abilities of blind persons. [2003 c 409 § 2; 1983 c 194 § 1.]

Findings—2003 c 409: "The legislature finds and declares the following:

- (1) Thousands of citizens in the state have disabilities, including blindness or visual impairment, that prevent them from using conventional print material.
- (2) Governmental and nonprofit organizations provide access to reading material by specialized means, including books and magazines prepared in braille, audio, and large-type formats.
- (3) Access to time-sensitive or local or regional publications, or both, is not feasible to produce through these traditional means and formats.
- (4) Lack of direct and prompt access to information included in newspapers, magazines, newsletters, schedules, announcements, and other time-sensitive materials limits educational opportunities, literacy, and full participation in society by people with print disabilities.
- (5) Creation and storage of information by computer results in electronic files used for publishing and distribution.
- (6) The use of high-speed computer and telecommunications technology combined with customized software provides a practical and cost-effective means to convert electronic text-based information, including daily newspapers, into synthetic speech suitable for statewide distribution by telephone.
- (7) Telephonic distribution of time-sensitive information, including daily newspapers, will enhance the state's current efforts to meet the needs of blind and disabled citizens for access to information which is otherwise available in print, thereby reducing isolation and supporting full integration and equal access for such individuals." [2003 c 409 § 1.]

(2004 Ed.)

children and individuals with a developmental disability from caregivers that have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability and competence before you are issued a license, contract, certificate, or authorized to have unsupervised access to children or to individuals with a developmental disability.

[Statutory Authority: RCW 74.15.030. 01-18-025, § 388-06-0100, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0110 Who must have background checks? The department requires background checks on individuals who will have unsupervised access to children or to individuals with a developmental disability in homes, facilities, or operations licensed, relicensed, or contracted by the department to provide care as required under chapter 74.15 RCW. The department requires background checks on the following people:

- (1) A person licensed, certified, or contracted by us to care for children (chapter 74.15 RCW and RCW 43.43.832);
- (2) A prospective or current employee for a licensed care provider or a person or entity contracting with us;
- (3) A volunteer or intern with regular or unsupervised access to children who is in a home or facility that offers licensed care to children;
- (4) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child;
- (5) A relative other than a parent who may be caring for a child or an individual with a developmental disability;
- (6) A person who regularly has unsupervised access to a child or an individual with a developmental disability;
- (7) A provider who has unsupervised access to a child or individual with a developmental disability in the home of the child or individual with a developmental disability; and
- (8) Prospective adoptive parents as defined in RCW 26.33.020.

[Statutory Authority: RCW 74.15.030. 01-18-025, § 388-06-0110, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0120 Who is not affected by this chapter? This chapter does not apply to schools, hospitals, or other facilities where the primary focus is not custodial.

[Statutory Authority: RCW 74.15.030. 01-18-025, § 388-06-0120, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children or individuals with a developmental disability? These regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children and individuals with a developmental disability that are processed by the department after the effective date of this chapter.

[Statutory Authority: RCW 74.15.030. 01-18-025, § 388-06-0130, filed 8/27/01, effective 10/1/01.]

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WAC 388-06-0140 What happens if I don't comply with the background check requirement? The department will deny, suspend or revoke your license, contract, certification, or authorization to care for children or for individuals with a developmental disability, if you or someone on the premises of your home or facility having unsupervised access does not comply with the department's requirement for a background check.

[Statutory Authority: RCW 74.15.030. 01-18-025, § 388-06-0140, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0150 What does the background check cover? (1) The department must review the following records:

- (a) Criminal convictions and pending charges.
 - (b) For children's administration, child protective service case file information (CAMIS) for founded reports of child abuse or neglect; and
 - (c) For children's administration, administrative hearing decisions related to any DLR license that has been revoked, suspended or denied.
- (2) The department may also review any civil judgment, determination or disciplinary board final decisions of child abuse or neglect.
- (3) The department may review law enforcement records of convictions and pending charges in other states or locations if:

- (a) You have lived in another state; and
 - (b) Reports from credible community sources indicate a need to investigate another state's records.
- (4) If you have lived in Washington state less than three years immediately prior to your application to have unsupervised access to children or to individuals with a developmental disability, the department requires that you be fingerprinted for a background check with the Washington state patrol (WSP) and the Federal Bureau of Investigation (FBI), as mandated by chapter 74.15 RCW.

[Statutory Authority: RCW 74.15.030. 01-18-025, § 388-06-0150, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0160 Who pays for the background check? (1) Children's administration (CA) pays for the general administrative costs for background checks for foster home applicants, relative, and CA adoptive home applicants.

(2) Children's administration pays for fingerprinting expenses for those foster home applicants and relatives who require fingerprinting.

(3) Children's administration does not pay for fingerprinting for employees, contractors, or volunteers associated with any other type of home or facility.

(4) The division of developmental disabilities pays for background checks for individuals seeking authorization to provide services to their clients.

[Statutory Authority: RCW 74.15.030. 01-18-025, § 388-06-0160, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0170 Will a criminal conviction permanently prohibit me from being licensed, contracted, or authorized to have unsupervised access to children or to individuals with developmental disability? (1) There are convictions for certain crimes that will permanently prohibit

(2005 Ed.)

(1) Issue a family child care home license to the applicant having a foster home license or other license involving full-time care; or

(2) Permit simultaneous care for the child and adolescent or adult on the same premises if the applicant or licensee:

(a) Demonstrates evidence that care of one client category will not interfere with the quality of care provided to another category of clients;

(b) Maintains the most stringent maximum capacity limitation for the client categories concerned;

(c) Requests and obtains a waiver permitting dual licensure; and

(d) Requests and obtains a waiver to subsection (2)(b) of this section, if applicable.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-060, filed 2/1/91, effective 3/4/91.]

WAC 388-155-070 Application and reapplication for licensure—Orientation, training and investigation.

(1) The person, organization, or legal entity applying for a license or relicensure under this chapter and responsible for operating the home shall:

(a) Attend orientation and training programs provided, arranged, or approved by the department;

(b) Comply with application procedures the department prescribes; and

(c) Submit to the department:

(i) A completed department-supplied application for family child care home license, including required attachments, ninety or more days before the:

(A) Beginning of licensed care;

(B) Expiration of a current license;

(C) Relocation of a home; or

(D) Change of licensed capacity category.

(ii) A completed criminal history and background inquiry form for each applicant, assistant, volunteer, or member of the household sixteen years of age or older having unsupervised or regular access to the child in care; and

(iii) The licensing fee.

(2) In addition to the required application materials specified under subsection (1) of this section, the applicant for initial licensure shall submit to the department:

(a) A department-supplied employment and education resume of the applicant and assistant including a transcript or its equivalent documenting early childhood education class completion, where appropriate; and

(b) Three references for the applicant.

(3) The applicant for a license under this chapter shall be eighteen years of age or older.

(4) The department may, at any time, require additional information from the applicant, licensee, assistant, volunteer, member of their household and other person having access to the child in care as the department deems necessary, including, but not limited to:

(a) Sexual deviancy evaluations;

(b) Substance and alcohol abuse evaluations;

(c) Psychiatric evaluations;

(d) Psychological evaluations; and

(e) Medical evaluations.

(5) The department may perform investigations of the applicant, licensee, assistant, volunteer, member of their household, and other person having access to the child in care as the department deems necessary, including accessing criminal histories and law enforcement files.

(6) The applicant shall conform to rules and regulations adopted by the:

(a) Department of health, promoting the health of the child in care, contained in this chapter; and

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire and other pertinent fire safety regulations adopted by the state fire marshal's office.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-070, filed 2/1/91, effective 3/4/91.]

WAC 388-155-080 Issuance of license. (1) The department shall issue the applicant or licensee a license for a specific number of children dependent on the:

(a) Department's evaluation of the home's premises and physical accommodations;

(b) Number and skills of the licensee, assistant, and volunteers; and

(c) Ages and characteristics of the children served.

(2) The department:

(a) May issue the applicant or licensee a license to care for fewer children than the home's maximum capacity; and

(b) Shall not issue the applicant or licensee a license for the care of more children than permitted under this chapter.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-080, filed 2/1/91, effective 3/4/91.]

WAC 388-155-090 License denial, suspension, or revocation. (1) Before granting a license and as a condition for continuance of a license, the department shall consider the ability of the applicant and licensee to meet the requirements of this chapter. If more than one person is the applicant or licensee, the department shall consider the persons' qualifications separately and jointly, and may deny, suspend, revoke, or not renew the license based on the failure of one of the persons to meet the requirements.

(2) The department shall deny, suspend, revoke, or not renew the license of a person who:

(a) Is a perpetrator of child abuse, or has been convicted of a crime involving child abuse or physical harm to another person, or allows such a person on the premises;

(b) Commits or was convicted of a felony reasonably related to the competency of the person to meet the requirements of this chapter;

(c) Engages in illegal use of a drug or excessive use of alcohol;

(d) Commits, permits, aids, or abets the commission of an illegal act on the premises;

(e) Commits, permits, aids, or abets the abuse, neglect, exploitation, or cruel or indifferent care to a child in care;

(f) Refuses to permit an authorized representative of the department, state fire marshal, or department of health to inspect the premises; or

(g) Refuses to permit an authorized representative of the department or the department of health access to records

- 388-150-490 Reporting of circumstantial changes. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-490, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-490, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-7070.
- 388-150-500 Posting requirements. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-500, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-500, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-7080.
- 388-150-990 Purpose and authority. [00-23-088, recodified as § 388-150-990, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), § 440-44-001, filed 6/4/82.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0001.
- 388-150-991 Waiver of fees. [00-23-088, recodified as § 388-150-991, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), § 440-44-002, filed 6/4/82.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0050.
- 388-150-992 Fee payment and refunds. [00-23-088, recodified as § 388-150-992, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), § 440-44-010, filed 6/4/82.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0090.
- 388-150-993 Denial, revocation, suspension, and reinstatement. [00-23-088, recodified as § 388-150-993, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), § 440-44-015, filed 6/4/82.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0100.

WAC 388-150-005 through 388-150-993 Repealed.
See Disposition Table at beginning of this chapter.

Chapter 388-155 WAC

MINIMUM LICENSING REQUIREMENTS FOR FAMILY CHILD DAY CARE HOMES

WAC

- 388-155-070 How do I apply for a license and what is required?
388-155-090 When can my license application be denied and when can my license be suspended or revoked?

WAC 388-155-070 How do I apply for a license and what is required? (1) To apply for a license to provide family home child care you must:

- (a) Be eighteen years of age or older;
- (b) Attend an orientation provided by the department;
- (c) Submit to the department a completed and signed family child care home license application form, including the following attachments:

(i) The twenty-four dollars per year license fee. The license fee may be paid for one, two or three years;

(ii) A completed criminal history and background inquiry form for each person sixteen years of age or older who will have unsupervised or regular access to the children in care. This includes you, any other applicants, assistants, volunteers and members of your household;

(iii) A copy of your picture identification issued by a government entity (could include but is not limited to: Driver's license, passport, state identification); and

(iv) A copy of your social security card or verification of your employer identification number (EIN).

(d) Submit to the department these additional documents either with your application or within the ninety-day licensing period:

(i) An employment and education resume for you and any assistants along with your school transcript, if you request:

(A) A waiver of the STARS training requirement; or

(B) A capacity higher than six children.

(ii) Three references for you;

(iii) Documentation of current TB exam by the Mantoux method for you, any assistants, volunteers and adult members of the household;

(iv) Documentation of current, standard first aid and infant/child CPR training for you and any assistant who will be left alone to care for the children;

(v) Documentation of your HIV/AIDS training;

(vi) Documentation of the local health jurisdiction approval of your private water supply and independent sewage system, if applicable;

(vii) A copy of your policies and procedures that you give to parents.

(e) Provide to the department any additional reports or information regarding you, any assistants, volunteers, members of your household or any other person having access to the child in care if any of those individuals may be unable to meet the requirements in chapter 388-155 WAC. This could include:

(i) Sexual deviancy evaluations;

(ii) Substance abuse evaluations;

(iii) Psychiatric evaluations; and

(iv) Medical evaluations.

(2) If we decide it is necessary, we will investigate you, other applicants, assistants, volunteers, members of your household, and other persons having access to the children in care. This investigation could include, but is not limited to, accessing criminal histories and law enforcement files and records.

[Statutory Authority: RCW 74.12.340, 74.15.030, and 26 U.S.C. 6109. 03-09-074, § 388-155-070, filed 4/15/03, effective 5/16/03. Statutory Authority: RCW 74.15.030. 00-06-040, § 388-155-070, filed 2/28/00, effective 3/30/00. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-070, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-070, filed 2/1/91, effective 3/4/91.]

WAC 388-155-090 When can my license application be denied and when can my license be suspended or revoked? (1) We must deny your license application, or suspend or revoke your license if you do not meet the requirements in this chapter.

(2) If more than one person applies for a license or is licensed under this chapter to provide child care at the same facility, we consider qualifications separately and together. We may deny your license application, or suspend or revoke your license if one person fails to meet the minimum licensing requirements.

WASHINGTON STATE ATTORNEY GENERAL

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